Part 1 Introduction and Purpose

1 Purpose and Sources of Authority

A Handbook Purpose

This handbook is designed to assist lenders in understanding:

- regulations governing the Guaranteed Farm Loan Program
- roles and responsibilities in processing and servicing FSA-guaranteed loans.

B Sources of Authority

The sources of authority for this handbook include 7 CFR Part 762 and other FSA regulations that may be referenced throughout this handbook.

2 Related References

A Related FSA Handbook

2-FLP is designed to assist FSA in processing and servicing guaranteed farm loans.

B FSA Website

The FSA website contains FSA basic program information, program updates, and forms that can be downloaded for use. The FSA website is http://www.fsa.usda.gov/.

C Regulation References

This handbook is designed to accompany 7 CFR Part 762. Throughout this handbook are **regulation references and verbatim citations in bold text**. These references are intended to highlight the requirement spelled out in the regulation. In some instances, a regulation reference may be found at the beginning of a paragraph in parentheses. This reference will be the basis for information within that paragraph. Regulation references in brackets in front of blocks of text are for those blocks of text only. Not all parts of the regulations referenced in the text are highlighted.

3-14 (Reserved)

Part 2 Guaranteed Farm Loan Programs

15 Program Purpose and Eligible Lenders

A Program Purpose

The FSA Guaranteed Farm Loan Program:

- enables lenders to extend credit to family farm owners or operators who do not qualify for standard commercial loans

- benefits beginning farmers and family farmers experiencing financial distress, as well as lending institutions and the local community as a whole

  Note: Farmers receive credit at reasonable terms to finance their current operations or to expand their business. Financial institutions receive additional loan business and servicing fees, as well as other benefits from the program.

- serves the local community by protecting family farmers and farm-related businesses.

B Requirements

Regulated lenders who have experience in agricultural lending are eligible to participate in the FSA Guaranteed Farm Loan Program. Lenders who have little or no experience with FSA-guaranteed loans are considered Standard Eligible Lenders (SEL) and must originate and service loans under SEL requirements.

Lenders who have a positive track record of participation in the program may participate in 1 of FSA's status lender programs. Certified Lender Program (CLP) and Preferred Lender Program (PLP) are the 2 status lender programs. Once lenders are approved by FSA as a CLP or PLP lender, they may process loans under the reduced paperwork and supervision requirements afforded to the respective status lender program.

For more information on the different lender types, see Part 4.

C Lender's Agreement

The purpose of FSA-1980-38, Lender's Agreement, is to:

- establish the lender as an approved participant in the FSA Guaranteed Farm Loan Program

- outline the terms and conditions for originating and servicing FSA-guaranteed loans.

Continued on the next page

15 Program Purpose and Eligible Lenders (Continued)

C Lender's Agreement (Continued)

The lender is responsible for originating and servicing all guaranteed loans in their portfolio according to the Lender's Agreement that is valid at the time.

Example: If a lender has an approved SEL Lender's Agreement, they will originate and service loans under SEL requirements spelled out in 7 CFR Part 762 and this handbook.

If the same lender later applies for PLP status and is approved, a new PLP Lender's Agreement will be executed. As long as the PLP Lender's Agreement remains in effect, the lender will originate and service all FSA-guaranteed loans in their portfolio, including loans originated while the lender was SEL, under the conditions agreed to in the PLP Lender's Agreement.

For CLP and PLP lenders, the Lender's Agreement is valid for 5 years from the date of execution by FSA. For SEL's, the Lender's Agreement is valid indefinitely from the time of execution by FSA, unless otherwise terminated by FSA.

16 Eligible Borrowers

A Requirements

For specific information on borrower eligibility, see Part 8, Section 1.

In general, to qualify for an FSA guarantee, a loan applicant must be actively involved in the day-to-day management of a family-sized farm operation and must:

- be a citizen of the United States or legal resident alien
- have the legal capacity to incur the obligations of the loan
- be unable to obtain sufficient credit without a guarantee at reasonable rates and terms to finance the farming operation.

In addition to meeting the eligibility criteria, the loan applicant must:

- have a satisfactory credit history
- demonstrate repayment ability
- provide sufficient security for the loan.

17 Types of Guaranteed Loans

A
Operating Loans

Operating loans (OL) may be used to finance items needed for a successful farm operation. These items include the following:

- livestock
- farm equipment
- annual operating expenses
- family living expenses
- refinancing debts under certain conditions.

For more information on operating loans, see Part 8, Sections 2 through 4 and Part 9.

B
Lines of Credit

Lines of Credit (LOC) are operating loans for annual operating purposes. Loan funds may be advanced and repaid repeatedly (revolve) throughout the year.

For more information on Lines of Credit, see Part 8, Sections 2 through 4 and Part 9.

C
Farm Ownership loans

Farm Ownership loans (FO) may be used to:

- purchase farmland
- construct or repair buildings and other fixtures
- develop farmland to promote soil and water conservation
- refinance debt.

For more information on Farm Ownership loans, see Part 8, Sections 2 through 4 and Part 9.

*** * ***

18 Interest Assistance Program

A Requirements

In certain situations, lenders may use the interest assistance program to assist a borrower in qualifying for an FSA-guaranteed loan. Under the interest assistance program, FSA will subsidize 4 percent of the interest rate on loans to qualifying borrowers.

For more information on the interest assistance program, see Part 9.

19 Full Faith and Credit Applicability and Exceptions (7 CFR 762.103)

A Full Faith and Credit Applicability

The loan guarantee constitutes an obligation supported by the full faith and credit of the United States.

B Exceptions for Fraud and Misrepresentation

The Agency may contest the guarantee only in cases of fraud or misrepresentation by a lender or holder, in which the lender or holder:

- **had actual knowledge of the fraud or misrepresentation at the time it became the lender or holder**
- **participated in or condoned the fraud or misrepresentation.**

C Exceptions for Lender Violations

The loan guarantee cannot be enforced by the lender, regardless of when the Agency discovers the violation, to the extent that the loss is a result of any of the following**:**

- **violation of usury laws**
- **negligent servicing**
- **failure to obtain the required security**
- **failure to use loan funds for purposes specifically approved by the Agency.**

Continued on the next page

19 Full Faith and Credit Applicability and Exceptions (7 CFR 762.103) (Continued)

D
Effects of Full Faith and Credit With Holders

The guarantee and right to require purchase will be directly enforceable by the holder even if either of the following occurred**:**

- **the loan guarantee is contestable based on the lender's fraud or misrepresentation**
- **the loan note guarantee is unenforceable by the lender based on a lender violation.**

20-30 (Reserved)

31 ECOA (7 CFR 762.101(b))

A Purpose

The Agency issues guarantees on loans made to qualified loan applicants without regard to race, color, religion, sex, national origin, marital status, or age, provided the loan applicant can enter into a legal and binding contract, or whether all or part of the applicant's income derives from any public assistance program or whether the applicant, in good faith, exercises any rights under the Consumer Protection Act.

ECOA prohibits discrimination against recipients of Federal financial assistance in the delivery of services to the public and in employment practices. FSA is required to comply with nondiscriminatory and equal opportunity practices in guaranteed loan making and servicing actions.

32 Conflict of Interest (7 CFR 762.110(f))

A Definition and Reporting

When a lender submits the application for a guaranteed loan, the lender will inform the Agency in writing of any relationship which may cause an actual or potential conflict of interest.

Relationships include:

- **the lender or its officers, directors, principal stockholders (except stockholders in a Farm Credit System institution that have stock requirements to obtain a loan), or other principal owners having a financial interest (other than lending relationships in the normal course of business) in the loan applicant or borrower**

- **the loan applicant or borrower, a relative of the loan applicant or borrower, anyone residing in the household of the loan applicant or borrower, any officer, director, stockholder or other owner of the loan applicant or borrower holds any stock or other evidence of ownership in the lender**

  Note: FSA is aware of the stock requirements of Farm Credit System institutions. These relationships will not have to be reported.

- **the loan applicant or borrower, a relative of the loan applicant or borrower, or anyone residing in the household of the loan applicant or borrower is an Agency employee**

- **the officers, directors, principal stockholders (except stockholders in a Farm Credit System institution that have stock requirements to obtain a loan), or other principal owners of the lender have substantial business dealings (other than in the normal course of business) with the loan applicant or borrower**

- **the lender or its officers, directors, principal stockholders, or other principal owners have substantial business dealings with an Agency employee.**

The lender must furnish additional information to the Agency upon request.

The Agency will not approve the application until the lender develops acceptable safeguards to control any actual or potential conflicts of interest.

Continued on the next page

32 Conflict of Interest (7 CFR 762.110(f)) (Continued)

B
FSA Employees

An FSA employee will not participate, directly or indirectly, in deliberations on, or determination of, any matter affecting the application or servicing of guaranteed (or direct) loan to any relative of the employee, any person residing in the employee's household, anyone with continuing business dealings with the employee, or any entity controlled by the employee.

33 Review and Appeals (7 CFR 762.104)

A
Request for an Appeal

The loan applicant or borrower and lender must jointly execute the written request for review of an alleged adverse decision made by the Agency. However, in cases where the Agency has denied or reduced the amount of the final loss payment, the decision may be appealed by the lender only.

A decision made by the lender adverse to the borrower is not a decision by the Agency, whether or not concurred in by the Agency, and may not be appealed.

The lender or Agency may request updated information from the borrower to implement an appeal decision.

34 Lender List and Classification (7 CFR 762.101(c))

A Lender List

The Agency maintains a current list of lenders who express a desire to participate in the guaranteed loan program. This list is made available to farmers upon request.

Lenders interested in being placed on this list should contact the local FSA office.

B Classification

Lenders who participate in the Agency guaranteed loan program will be classified into one of the following categories:

- **Standard Eligible Lender**
- **Certified Lender**
- **Preferred Lender.**

C Approved Lender Program

Lenders may continue to make loans under Approved Lender Program (ALP) agreements until they expire; however, these agreements will not be renewed when they expire. All ALP agreements with farm credit institutions will expire on February 12, 2001.

35-45 (Reserved)

Part 4 Lender Eligibility

46 Eligibility Requirements for Standard Eligible Lender (7 CFR 762.105(b))

A Overview

The basic level of participation in the FSA Guarantee Farm Loan Program is Standard Eligible Lender (SEL). SEL must meet the eligibility criteria in this section to submit an application for a guarantee. If the lender does not meet the eligibility criteria to the satisfaction of FSA, the application will be denied.

B Capacity

A lender must have experience in making and servicing agricultural loans and have the capability to make and service the loan for which a guarantee is requested.

The lenders must not have losses or deficiencies in processing and servicing guaranteed loans above a level which would indicate an inability to properly process and service a guaranteed agricultural loan.

Previous problems with a lender, as evidenced in monitoring reports, excessive loss claims, or denial of loss claims, will be considered in this determination.

Continued on the next page

46 Eligibility Requirements for Standard Eligible Lender (7 CFR 762.105(b)) (Continued)

C Examination and Supervision

A lender must be subject to credit examination and supervision by an acceptable State or Federal regulatory agency.

Only regulated lenders that are subject to both examination and supervision may participate in the FSA Loan Guarantee Program. Examination will normally include a review of the lenders' asset quality, management practices, financial condition, and compliance with applicable laws and regulations. Supervision gives the regulator the authority to require that the lender make changes to ensure safety and soundness. Acceptable agencies include, but are not limited to, the following:

- FDIC
- Office of Comptroller of the Currency
- Office of Thrift Supervision
- Federal Reserve
- FCA
- National Credit Union Administration
- State banking commissions.

Lenders that are audited and subject to oversight by a State agency may or may not be examined and subject to supervision.

Continued on the next page

46 Eligibility Requirements for Standard Eligible Lender (7 CFR 762.105(b)) (Continued)

D
Local Lender

The lender must maintain an office near enough to the collateral's location so it can properly and efficiently discharge its loan making and loan servicing responsibilities or use Agency approved agents, correspondents, branches, or other institutions or persons to provide expertise to assist in carrying out its responsibilities. The lender must be a local lender unless it does either of the following**:**

- **normally makes loans in the region or geographic location in which the loan applicant's operation being financed is located**
- **demonstrates specific expertise in making and servicing loans for the proposed operation.**

It is expected that the lender's business office will be located near the loans that it services. If the lender is lending out of its normal service area, FSA shall determine whether or not the loan can be appropriately serviced by the lender. Depending on the type of loan and the type of farming operation, it is important the lender have:

- local knowledge
- the ability to conduct inspections of collateral
- regular contact with the borrower.

E
Participation

The lender, its officers, or agents must not be debarred or suspended from *--participation in Government contracts or programs and the lender must not **be delinquent on a Government debt.--***

47 Approval Process for Standard Eligible Lender

A Approval

Standard Eligible Lender approval is granted for the purpose of originating and servicing a guaranteed loan. SEL approval is granted with each guarantee application approved. The review of the lender will be very limited when the lender has received previous guarantees.

48 Monitoring Standard Eligible Lender

A Review of Lender Performance

FSA shall review 40 percent of the lender's guaranteed loan files over the course of each year. To the extent that deficiencies are discovered during the monitoring review, FSA shall inform the lender in writing and, if necessary, propose a timeframe for a reinspection of the deficiencies.

B Imposing Sanctions

In situations where FSA is unable to resolve deficiencies with the lender, enforcement actions may be taken. Before the implementation of any enforcement action by FSA, the lender will be:

- notified in writing of the deficiencies
- given a specific timeframe in which to resolve the deficiencies
- warned of the sanctions that may be taken by FSA if the deficiencies are not resolved.

Examples of unresolved deficiencies may include the following:

- failure on the part of the lender to obtain an adequate appraisal
- failure to perfect a lien
- failure to adequately monitor the borrower or the collateral.

Continued on the next page

48 Monitoring Standard Eligible Lender (Continued)

B Imposing Sanctions (Continued)

The sanction imposed on the lender should be the most effective in resolving the deficiency. Examples of sanctions include the following:

- adjustment of loss claims
- increased monitoring visits
- increased reporting on corrective actions taken
- increased documentation for guarantee processing
- determination that the lender's performance does not meet Standard Eligible Lender standards and, therefore, is not eligible for future guaranteed loans
- in extreme cases, suspension or debarment.

49 Eligibility Requirements for Certified Lender Program (7 CFR 762.106)

A Overview

The Certified Lender Program (CLP) is a program that permits lenders with a proven track record in making and servicing guaranteed loans to operate under a streamlined origination and servicing process. While the CLP lender is still bound by FSA regulations and must use and maintain on file FSA-approved forms, information submitted to FSA for approval is minimized. The State Office is responsible for approving all CLP's in the State, based on information from the local offices and prior performance of the lender.

B Threshold Eligibility

The lender must **qualify as a Standard Eligible Lender under § 762.105.**

To be eligible to apply for certified lender status, the lender must meet the eligibility requirements of Standard Eligible Lender as detailed in paragraph 46.

Continued on the next page

49 Eligibility Requirements for Certified Lender Program (7 CFR 762.106) (Continued)

C Loan Production and Performance

The lender must **have a lender loss rate not in excess of 7.00 percent.**

The Agency may waive the loss rate criteria for those lenders whose loss rate was substantially affected by a disaster as defined in 7 CFR 1945, subpart A.

The performance of other lenders under similar conditions will be considered before granting such a waiver.

[7 CFR 762.102] Loss rate equals the net amount of guaranteed OL, FO, and SW loss claims paid on loans made in the past 7 years divided by the total loan amount of the OL, FO, and SW loans made in the past 7 years.

If a lender applying for CLP status is or has recently been involved in a merger or acquisition, all loans and losses attributed to both lenders will be considered in the eligibility calculations.

The lender must continue to meet this requirement to hold CLP status. As part of the annual CLP review, FSA shall ensure that the lender's losses remain below the maximum loss rate.

Continued on the next page

49 Eligibility Requirements for Certified Lender Program (7 CFR 762.106) (Continued)

D
Experience

The lender must **have proven an ability to process and service Agency guaranteed loans by showing that the lender:**

- **submitted substantially complete and correct guaranteed loan applications**
- **serviced all guaranteed loans according to Agency regulations.**

In evaluating whether or not a lender meets these requirements, the State Office shall review historical monitoring reports on the lender. Recurring and/or unresolved issues about origination or servicing will be considered in the approval of CLP status for the lender.

E
Minimum Guaranteed Loans

The lender must **have made a minimum of 10 Agency guaranteed loans ever and five such loans in the past 2 years.**

The lender must continue to meet this requirement to hold CLP status.

Continued on the next page

49 Eligibility Requirements for Certified Lender Program (7 CFR 762.106) (Continued)

F
Acceptable Level of Soundness

The lender must **not be under any regulatory enforcement action such as a cease and desist order, written agreement, or an appointment of conservator or receiver, based on financial condition.**

G
Qualified Person

The lender must **designate a qualified person or persons to process and service Agency guaranteed loans for each of the lender offices which will process CLP loans. To be qualified, the person must meet the following conditions:**

- **have attended Agency sponsored training in the past 12 months or will attend training in the next 12 months**
- **agree to attend Agency sponsored training each year.**

The CLP application should include the resume or resumes of the person or persons qualified to process and service FSA-guaranteed loans. For a CLP lender, it is expected that this person will have experience in agricultural lending and experience in originating and servicing FSA-guaranteed loans.

H
Acceptable Forms

The lender must **use forms acceptable to the Agency for processing, analyzing, securing, and servicing Agency guaranteed loans and lines of credit.**

Continued on the next page

49 Eligibility Requirements for Certified Lender Program (7 CFR 762.106) (Continued)

I Approved Documents

The lender must **submit to the Agency copies of financial statements, cash flow plans, budgets, promissory notes, analysis sheets, collateral control sheets, security agreements, and other forms to be used for farm loan processing and servicing.**

As part of the application, copies of these documents must be submitted to FSA for review of conformance with program requirements. The CLP lender should also inform FSA of any proposed change to these documents before implementing the change.

50 Approval of Certified Lenders (7 CFR 762.106)

A Request for CLP Status

Lenders who desire CLP status must prepare a written request addressing:

- **the States in which they desire to receive CLP status and their branch offices which they desire to be considered by the Agency for approval**
- **each item of the eligibility criteria for CLP approval in** paragraph 49**, as appropriate.**

See subparagraph B for what a request should contain.

The lender may include any additional supporting evidence or other information the lender believes would be helpful to the Agency in making its determination.

The lender must send its request to the Agency State Office for the State in which the lender's headquarters is located.

The lender must provide any additional information requested by the Agency to process a CLP request, if the lender continues with the approval process.

Continued on the next page

50 Approval of Certified Lenders (7 CFR 762.106) (Continued)

B Eligibility Criteria

Before a lender is approved for CLP status, the lender must demonstrate compliance with the following eligibility criteria:

- provide evidence of being an eligible lender
- provide information to show that loan losses (net of recovery) do not exceed 7 percent
- have the capacity to process and service FSA-guaranteed loans
- certify that the person designated to process and service FSA-guaranteed loans has attended FSA loan processing and servicing training within the previous 12 months or will attend training within the next 12 months
- agree to send for annual training the designated person from each of the lender's offices responsible for processing guaranteed loans
- agree to use forms acceptable to FSA for processing, analyzing, securing, and servicing FSA-guaranteed loans/LOC's
- if not previously submitted, copies of financial statements, cash flow plans, loan agreements, analysis sheets, security agreements, and promissory notes should be submitted with the request for CLP status
- have closed a minimum of 10 FSA-guaranteed FO, SW, and OL loans/LOC's and 5 loans within the past 2 years.

  Note: Multiple loans for 1 borrower will be counted separately. However, advances on LOC's do not count as separate loans.

Continued on the next page

50 Approval of Certified Lenders (7 CFR 762.106) (Continued)

C
FSA Approval

CLP status is granted on a statewide basis by the FSA State Office. A separate Lender's Agreement is required for each State. A lender may request CLP status for all branches within a State, or only the specific branches that are using the guaranteed program. **The Agency will determine which branches of the lender have the necessary experience and ability to participate in the CLP program based on the information submitted in the lender application and on Agency experience.** The branch offices for which CLP status is granted are listed on the Lender's Agreement.

Lenders who meet the criteria will be granted CLP status for a period not to exceed 5 years.

D
Renewal

CLP status will expire within a period not to exceed 5 years from the date the lender's agreement is executed, unless a new lender's agreement is executed.

Renewal of CLP status is not automatic. A lender must submit a written request for renewal of a lender's agreement with CLP status which includes information:

- **updating the material submitted in the initial application**
- **addressing any new criteria established by the Agency since the initial application.**

A request for renewal of CLP status must be submitted to FSA at least 60 calendar days before the expiration of the current Lender's Agreement.

CLP status will be renewed if the applicable eligibility criteria under this section are met, and no cause exists for denying renewal under sub**paragraph** 51 B.

51 Monitoring Certified Lender Program (7 CFR 762.106)

A Monitoring Reviews

CLP lenders will provide information and access to records upon Agency request to permit the Agency to audit the lender for compliance with these regulations.

FSA shall conduct a monitoring review on each CLP lender. FSA shall review at least 20 percent of CLP's files over the course of a year.

B Revoking Certified Lender Program Status

In addition to the sanctions that may be imposed in subparagraph 48 B, **the Agency may revoke the lender's CLP status at any time during the 5 year term for cause.**

Any of the following instances constitute cause:

- **violation of the terms of the lender's agreement**
- **failure to maintain CLP eligibility criteria**
- **knowingly submitting false or misleading information to the Agency**
- **basing a request on information known to be false**
- **deficiencies that indicate an inability to process or service Agency guaranteed farm loans**

Continued on the next page

51 Monitoring Certified Lender Program (7 CFR 762.106) (Continued)

B Revoking Certified Lender Program Status (Continued)

- **failure to correct cited deficiencies in loan documents upon notification by the Agency**
- **failure to submit status reports in a timely manner**
- **failure to use forms accepted by the Agency**
- **failure to comply with the reimbursement requirements of** subparagraph 376 A.

C Reinstatement of Certified Lender Program Status

A lender which has lost CLP status must be reconsidered for eligibility to continue as a Standard Eligible Lender in submitting loan guarantee requests. They may reapply for CLP status when the problem causing them to lose their status has been resolved.

52 Eligibility Requirements for Preferred Lender Program (7 CFR 762.106)

A Overview

The Preferred Lender Program (PLP) is the top status a lender can hold in the FSA Guaranteed Farm Loan Program. PLP was developed to recognize experienced lenders by streamlining submission requirements, decreasing turnaround time on FSA actions, and allowing lenders to originate and service guaranteed loans as they do their unguaranteed loans. PLP status is granted by the FSA National Office.

Continued on the next page

52 Eligibility Requirements for Preferred Lender Program (7 CFR 762.106) (Continued)

B
Meeting CLP Eligibility Criteria

The lender **must meet the CLP eligibility criteria.**

The PLP lender must be a lender who has a track record with FSA-guaranteed loans. While the lender does not have to hold or have held CLP status, they must qualify for CLP status. This includes the requirement of having made 5 guaranteed loans in the past 2 years.

C
Credit Management System

The lender must **have a credit management system, satisfactory to the Agency, based on the following:**

- **the lender's written credit policies and underwriting standards**
- **loan documentation requirements**
- **exceptions to policies**
- **analysis of new loan requests**
- **credit file management**
- **loan funds and collateral management system**
- **portfolio management**
- **loan reviews**
- **internal credit review process**
- **loan monitoring system**
- **the board of director's responsibilities.**

Unlike Standard Eligible Lender's and CLP lenders who originate and service guaranteed loans under FSA standards and guidance, PLP lenders will use their own credit management system for originating and servicing guaranteed loans. The items that will be considered when reviewing the credit management system are in subparagraph D.

Once the lender's credit management system is approved by FSA, it becomes the operational plan and a part of the lender's agreement between the lender and FSA for originating and servicing guaranteed loans. FSA shall monitor the lender by determining whether or not they are in compliance with the terms and conditions agreed to in the credit management system.

Continued on the next page

52 Eligibility Requirements for Preferred Lender Program (7 CFR 762.106) (Continued)

D
PLP Guidelines The following are the guidelines for PLP credit management system.

The lender should address each of the following issues, either with copies of documents such as board policies, procedures, or guidance memorandum, or, if no documented guidance exists, with an explanation of how the lender handles the issue. The lender should include copies of any forms and documents routinely used in loan application, underwriting, closing, monitoring, and servicing.

I. General Operations.

A. Normal trade area, conditions under which the lender would lend outside of its trade area. Commodities or enterprises the lender typically lends for.

B. The lending authority for loan officers that will be processing guaranteed loans; lending authority of a loan or executive committee, if any; and responsibilities of the board of directors in reviewing, ratifying, or approving loans.

C. Process for handling policy exceptions.

D. Guidelines for setting interest rates (pricing) and repayment terms. Fee structure and when fees can be waived.

E. Internal credit review system. Who does it? How are the results reported? How often is it done? What is the scope? How are deficiencies followed up?

F. Use of Agents, Consultants and Packagers. When are outside parties used?

G. Organizational Structure.

H. Qualifications of loan officers, either in general, or specifically for loan officers designated to work on FSA guaranteed loans.

I. Method of monitoring compliance with FSA reporting requirements.

II. Loan Analysis / Underwriting.

A. Management Ability/Credit History Analysis.

- What credit references does the lender require?
- Does the lender have different standards for new customers or beginning farmers?
- What factors in an applicant's credit history would determine whether or not credit is granted?

Continued on the next page

52 Eligibility Requirements for Preferred Lender Program (7 CFR 762.106) (Continued)

D
PLP Guidelines
(Continued)

- How will the lender determine issues such as previous participation in government lending programs and suspension or debarment from those programs?
- How will the lender investigate environmental issues that may arise in the application?

B. Capacity Analysis.

- What data is gathered and what ratios are calculated to determine repayment capacity?
- What are the lender's minimum capacity requirements for guaranteed and nonguaranteed loans?
- When and how are income statements evaluated?

C. Capital Analysis.

- What data is gathered and what ratios are calculated to analyze the borrower's capital position?
- What are the lender's minimum capital requirements for guaranteed and nonguaranteed loan approval?
- How current must the Financial Statement be? How many historical statements are required at loan origination? What supporting schedules are required?
- What is the consolidation and/or combination process for entities and when is it required?
- What debts are verified and how is the verification documented?

D. Collateral Analysis.

- How does the lender determine the loan is properly secured?
- What are the guidelines for obtaining and reviewing appraisals? How current must an appraisal be?
- How is ownership of assets verified?
- How are possible prior liens verified/determined?
- What are the qualifications of the chattel and real estate appraisers used by the lender?

E. Conditions.

- When does the lender place special conditions (such as reporting requirements) on the loan?
- What controls are used to assure loan proceeds are utilized as planned? How are loan proceeds disbursed? Are there limitations on the amount advanced in relation to the value of the collateral?

Continued on the next page

52 Eligibility Requirements for Preferred Lender Program (7 CFR 762.106) (Continued)

D
PLP Guidelines
(Continued)

III. The Loan Servicing/Administration System.

A. General Servicing.

- Describe the portfolio monitoring system. When is a loan placed on a watchlist and/or when is the decision made to take a special servicing action? Who makes special servicing action decisions?
- On an ongoing basis, how often and what kind of financial statements are obtained for each borrower and loan type?
- How is security monitored?
- How are requirements for insurance established? How does the lender ensure proper insurance is in place?

B. Delinquencies.

- How are delinquencies handled?
- When an account is delinquent, what information is necessary to support the rescheduling of a loan?
- When is a loan servicing plan required?

C. Deferrals.

- How are deferrals documented?
- How is it decided that a deferral is an appropriate action?

D. Debt Writedown.

- When are debt writedowns considered?
- How is it decided that a debt writedown may be appropriate?

E. How are partial releases approved and processed?

F. Other Servicing Actions.

- What is the lender's criteria for a release of security with no consideration?
- What is the lender's policy or criteria for releasing obligated parties from liability?
- What is the typical process for liquidation/foreclosure?

Continued on the next page

52 Eligibility Requirements for Preferred Lender Program (7 CFR 762.106) (Continued)

E
FSA Experience

--**The lender must **have made a minimum of 20 Agency guaranteed farm loans in the past five years.--

F
Loss Rate

The lender must have a lender loss rate not in excess of 3 percent.

[7 CFR 762.102] Loss rate equals the net amount of guaranteed OL, FO, and SW loss claims paid on loans made in the past 7 years divided by the total loan amount of the OL, FO, and SW loans made in the past 7 years.

If a lender applying for PLP status is or has recently been involved in a merger or acquisition, all loans and losses attributed to both lenders will be considered in the eligibility calculations.

The Agency may waive the loss rate criteria for those lenders whose loss rate was substantially affected by a disaster as defined in 7 CFR 1945, subpart A.

This waiver may be granted only by the National Office.

G
Sound Loan Proposals

The lender must show a consistent practice of submitting applications for guaranteed loans containing accurate information supporting a sound loan proposal.

PLP lenders are expected to be experienced agricultural lenders who can demonstrate a history of consistently developing complete and accurate applications with minimal FSA involvement.

Continued on the next page

52 Eligibility Requirements for Preferred Lender Program (7 CFR 762.106) (Continued)

H Recurring Deficiencies

The lender must show a consistent practice of processing Agency guaranteed loans without recurring major or minor deficiencies.

In reviewing this requirement, FSA will check previous monitoring reviews for major and minor recurring deficiencies. **[7 CFR 762.102] A major deficiency is one that directly affects the soundness of the loan.** Examples of major deficiencies may include the following:

- failure to obtain a complete appraisal report
- failure to perfect a lien
- failure to verify debts
- failure to obtain a credit report
- using unsound lending practices, such as unsupportable projections, inadequate collateral, or unsound assumptions.

[7 CFR 762.102] A minor deficiency violates Agency procedure, but does not affect the soundness of the loan. Minor deficiencies may include the following:

- nonsubstantive math errors
- missing forms
- delays in responding to FSA inquiries.

Continued on the next page

52 Eligibility Requirements for Preferred Lender Program (7 CFR 762.106) (Continued)

I Ability to Service Guaranteed Loans

The lender must demonstrate a consistent, above average ability to service guaranteed loans based on the following:

- **borrower supervision and assistance**
- **timely and effective servicing**
- **communication with the Agency.**

This criterion should be reviewed in the light of the lender's relationship to FSA and its borrowers. Three specific criteria are addressed.

- **Borrower Supervision and Assistance.** For PLP lenders, FSA expects that lenders will routinely work with borrowers to set goals and resolve deficiencies. For troubled borrowers, FSA would look:
  - for lender actions to communicate with the borrower regarding their complete credit and debt situation
  - to resolve financial difficulties with a view of the big picture.
- **Timely and Effective Servicing.** In assessing the PLP request, FSA shall look at how the lender has serviced its existing portfolio. Have problem loans been monitored closely and action taken promptly? Have loans been adequately protected in bankruptcy, litigation, or liquidation? Has the lender used good judgment in servicing actions, maintained control, and minimized losses to FSA?
- **Communication With FSA.** Because of the nature of PLP, good communication with FSA is critical. Is FSA informed of issues and potential losses at the early warning stage? Does the lender submit required reports on time? Are issues discovered in monitoring reviews quickly resolved and communicated to FSA?

Continued on the next page

52 Eligibility Requirements for Preferred Lender Program (7 CFR 762.106) (Continued)

J
Qualified Person

The lender must **designate a person or persons, approved by the Agency, to process and service PLP loans.**

The lender should detail the minimum educational and experience requirements of loan officials or include the resume or resumes of the person or persons who are qualified to process and service FSA-guaranteed loans. For a PLP lender, it is expected that this person will have significant experience in agricultural lending and significant experience in originating and servicing FSA-guaranteed loans. To satisfy this requirement, the lender's application should address the experience the designated person has regarding the items in subparagraphs G and I.

The lender must notify FSA if the designated person representing the lender changes.

53 Approval Requirements (7 CFR 762.106)

A
Request for Approval

Both the lender and FSA should develop the lender's request for approval. The lender should inform the State Office of its intent to submit a PLP request. The State Office may provide additional guidance to the lender in developing its application. The request should be in the following parts:

- Part I. The Lender's Application Letter demonstrating the lender meets the PLP criteria, excluding credit management system.
- Part II. A copy of the lender's proposed credit management system. See subparagraph 52 D for the requirements of this part.

Continued on the next page

53 Approval Requirements (7 CFR 762.106) (Continued)

A Request for Approval (Continued)

The State Office will provide comments and recommendations to the National Office. This part of the package will be developed including information gathered from the following sources:

- County and District Offices where the lender proposes to do business and has done business in the past
- in a multi-State request, the other FSA State Offices located in the lender's region.

The State Office shall review the lender's proposed credit management system to make a recommendation to the National Office. However, the State Office will **not** set minimal underwriting, servicing, or liquidation standards, processes, or procedures for the lender.

B National Office Review

The National Office shall review the PLP request, contacting the lender if necessary, and make the approval decision.

C Conditions of Approval

Lenders who meet the criteria will be granted PLP status for a period not to exceed 5 years.

PLP status will be conditioned on the lender carrying out its credit management system as proposed in its PLP status and any additional loan making or servicing requirements agreed to and documented in the PLP lender's agreement.

Continued on the next page

53 Approval Requirements (7 CFR 762.106) (Continued)

C Conditions of Approval (Continued)

If the PLP lender's agreement does not specify any agreed upon process for a particular action, the PLP lender will act according to regulations governing CLP lenders.

Example: If the PLP lender does not state in its credit management system what historical financial information will be collected when developing applicant cash flow budgets, the CLP requirements in paragraph 153 will be followed.

D Renewal

PLP status will expire within a period not to exceed 5 years from the date the lender's agreement is executed, unless a new lender's agreement is executed.

Renewal of PLP status is not automatic. A lender must submit a written request for renewal of a lender's agreement with PLP status which includes information:

- **updating the material submitted in the initial application**
- **addressing any new criteria established by the Agency since the initial application.**

PLP status will be renewed if the applicable eligibility criteria under this section are met, and no due cause exists for denying renewal under subparagraph 54 B.

54 Monitoring the PLP Lender (7 CFR 762.106)

A Monitoring Reviews

PLP lenders will provide information and access to records upon Agency request to permit the Agency to audit the lender for compliance with these regulations.

FSA will review at least 20 percent of the lender's files each year to ensure compliance with the lender's credit management system.

Continued on the next page

54 Monitoring the PLP Lender (7 CFR 762.106) (Continued)

B
Revoking PLP Status

In addition to the sanctions that may be imposed in subparagraph 48 B, a PLP lender may, at the discretion of the National Office, have its status revoked **at any time during the 5 year term for cause. Any of the following instances constitute cause for revoking or not renewing PLP status:**

- **violation of the terms of the lender's agreement**
- **failure to maintain PLP eligibility criteria**
- **knowingly submitting false or misleading information to the Agency**
- **basing a request on information known to be false**
- **deficiencies that indicate an inability to process or service Agency guaranteed farm loans**
- **failure to correct cited deficiencies in loan documents upon notification by the Agency**
- **failure to submit status reports in a timely manner**
- **failure to use forms, or follow credit management systems accepted by the Agency**
- **failure to comply with the reimbursement requirements of** subparagraph 376 A**.**

C
Reinstatement of PLP Status

A lender which has lost PLP status must be reconsidered for eligibility to continue as a Standard Eligible Lender or as a CLP lender in submitting loan guarantee requests. They may reapply for PLP status when the problem causing them to lose their status has been resolved.

55-68 (Reserved)

Part 5 Loan Application Requirements (7 CFR 762.110)

69 Application Requirements for SEL's and CLP Lenders (7 CFR 762.110)

A General Application Requirements

SEL's and CLP lenders must perform at least the same level of evaluation and documentation for guaranteed loans as for nonguaranteed loans of a similar type and amount.

Good communication will minimize problems and help ensure a rapid review of applications. FSA will communicate with lenders throughout the application preparation and submission process. Lenders are encouraged to:

- contact FSA for assistance with the application
- address any issues or deficiencies before they become problems.

Lenders may use FSA-1980-01, Lender's Processing Checklist, as an application processing checklist.

B Maintaining Complete Loan File

All lenders must compile and maintain in their files a complete application for each guaranteed loan. CLP lenders must certify that the required items, not submitted, are in their files.

--**The lender's file must contain the applicable items in paragraphs 69.5 and 69.6 and all correspondence with the borrower regarding servicing actions and**-- other loan-related documentation generated after loan approval.

The Agency may request additional information from any lender or review the lender's loan file as needed to make eligibility and approval decisions.

*--69.5 Requirements for Loans of $50,000 or Less

A Application Package--*

A complete application for loans of $50,000 or less from SEL and CLP lenders must, at least, consist of:

- **the application form** (see subparagraph B)
- **loan narrative** (see subparagraph C)
- **balance sheet** (see subparagraph D)
- *--**cash flow budget** (see subparagraph E)
- description of farmed land (see subparagraph F)
- **credit report** (see subparagraph G)
- environmental information (if needed see subparagraph H)
- information related to entity applicants (if needed see subparagraph I)**.--***

In addition to the minimum requirements, the lender will perform at least the same level of evaluation and documentation for a guaranteed loan that the lender typically performs for non-guaranteed loans of a similar type and amount.

The $50,000 threshold includes any single loan, or package of loans submitted for consideration at any one time. A lender must not split a loan into two or more parts to meet the threshold thereby avoiding additional documentation.

Note: An application requesting guarantees of multiple loans of different types (FO, OL, LOC), each of which is less than $50,000, will be processed under the requirements of this paragraph.

The Agency may require lenders with a lender loss rate in excess of 7 percent *--to assemble additional documentation from paragraph 69.6.

Paragraph 69.7 describes which items must be submitted to FSA. On an **--*** individual lender basis, FSA may request additional information to make eligibility and approval decisions.

B Application Form

Lenders may use FSA-1980-25 or their own loan application form if it contains the same information. If a lender uses its own application form, the lender must attach an executed FSA-1980-25 containing the loan applicant's name and address and any information not on the lender's form.

Continued on the next page

*--69.5 Requirements for Loans of $50,000 or Less (Continued)

C Loan --* Narrative

The application package must include a narrative description of the lender's underwriting of the loan. The narrative must contain information and analysis of any loan application data that are out of the ordinary, or at variance with normal practices for the type of operation and region. The narrative must be an evaluation and not just a summary of the data. It may be less detailed for a present customer who already has a guaranteed loan or an FSA direct loan.

The narrative should address the following, as applicable:

- describe the farming operation, such as types of enterprises, key personnel and management structure, their roles and background, proposed changes to the operation and adequacy of real estate, equipment, and other facilities
- an assessment of the adequacy of the collateral being offered to secure the proposed loan
- a discussion of the loan applicant's financial condition and projected repayment ability

  Note: The lender should discuss any significant assumptions or deviations from historical performance in the proposed cash flow budget.

- the short-term and long-term business goals of the operation
- the borrower's reporting requirements, limitations, and other conditions based on the lender's analysis of the proposal
- lender servicing plan describing the borrower's financial reporting requirements, limitations and conditions, plans for visiting the borrower, and any other borrower supervision
- if the loan contains balloon payments, the conditions related to the renewal of loan
- a discussion of how the loan applicant meets the loan eligibility requirements.

D Balance Sheet

The application package must contain a balance sheet for the loan applicant that was prepared within 90 calendar days of the application submission.

Continued on the next page

***--69.5 Requirements for Loans of $50,000 or Less (Continued)**

E
Cash Flow Budget

The lender should submit a cash flow budget as described in Exhibit 2. If significant changes are expected in the operation during the life of the loan, more than 1 cash flow budget may need to be developed.**--***

F
Description of Farmed Land

A description of the location of each tract of land to be farmed by the loan applicant should be provided. This may be by FSA farm number, legal description, plat map, or other identifying method. This may be included as part of the loan narrative.

G
Credit Report

A credit report on the loan applicant's credit history must be provided. In addition, lenders should consider any other pertinent information concerning the loan applicant's credit history.

H
Environmental Information

Borrowers are required to have a current AD-1026, Highly Erodible Land Conservation and Wetland Conservation Certification, on file with FSA. Lenders should remind borrowers that AD-1026 must be executed with FSA if one is not already on file.

FSA can conduct its environmental review in most cases without additional information from the lender. However, occasionally additional information is needed, and until this information is received, the application is not complete, and the loan processing timeframe does not start. Situations needing additional information often involve wetland determinations, potential historical or archaeological sites, or construction of major confinement livestock facilities. The review is FSA's responsibility to conduct. However, the information to complete this review is part of a complete application.

I
Additional Requirements for Entity Applicants

--**In addition to the information required in this paragraph and paragraph 69.6,**-- entity applicants must submit additional information for each entity member. The application must contain the following information about each entity member:

- name
- address
- Social Security number
- percent ownership interest in the entity
- current balance sheet.

*--69.6 Requirements for Loans Over $50,000

A
Application Package

A complete application package for a guaranteed loan over $50,000 will consist of the items in paragraph 69.5, plus subparagraphs B through G.

Note: Paragraph 69.7 describes which items must be submitted to FSA.**--***

B
Verification of Income

Nonfarm and "other farm" income should be documented using FSA forms or documentation the lender uses for its nonguaranteed loans.

C
Verification of Debts Over $1,000

Verification can be documented using FSA forms or documentation the lender uses for its nonguaranteed loans.

D
Financial History

The financial history should support cash flow projections and include 3 years of income and expenses and 3 years of balance sheets.

E
Production History

--**The application should include **3 years of production history** (SEL only).**--

F
Proposed Loan Agreements

Any proposed nontypical agreements between the lender and the borrower should be explained in the narrative.

G
Development Plans

If construction or development is planned, a copy of the plans, a copy of the specifications, and a development schedule is needed**.**

--69.7 Submission Requirements for SEL's and CLP Lenders--

A Submission Requirements

The following table summarizes the submission requirements for SEL's and CLP lenders. In addition to the items submitted to FSA, lenders are expected to maintain in their files all applicable items that do not need to be submitted. Lenders certify that they have the required documentation in their files by signing FSA-1980-25.

Submission Requirement	For Loans $50,000 or Less		For Loans More Than $50,000	
	SEL	CLP Lender	SEL	CLP Lender
Application Form	U	U	U	U
--Loan Narrative--	U	U	U	U
* * * Balance Sheet	U	U	U	U
Cash Flow Budget	U	U	U	U
* * * Description of Farmed Land	U	U	U	U
Entity Information (if applicable)	U	U	U	U
Credit Report	U	F	U	F
Environmental Information (if applicable)	U	U	U	U
* * *	* * *	* * *	* * *	* * *
Proposed Loan Agreement			U	F
Verification of Debts Over $1,000			U	F
Verification of Nonfarm Income			U	F
3 Years of Production History			U	N/A
3 Years of Financial History			U	F
--Development Plans (if applicable)--			U	F

Note: Items marked with an "F" are items that do not have to be submitted, but must be maintained in the lender's file.

If the lender is requesting interest assistance, the following must be submitted:

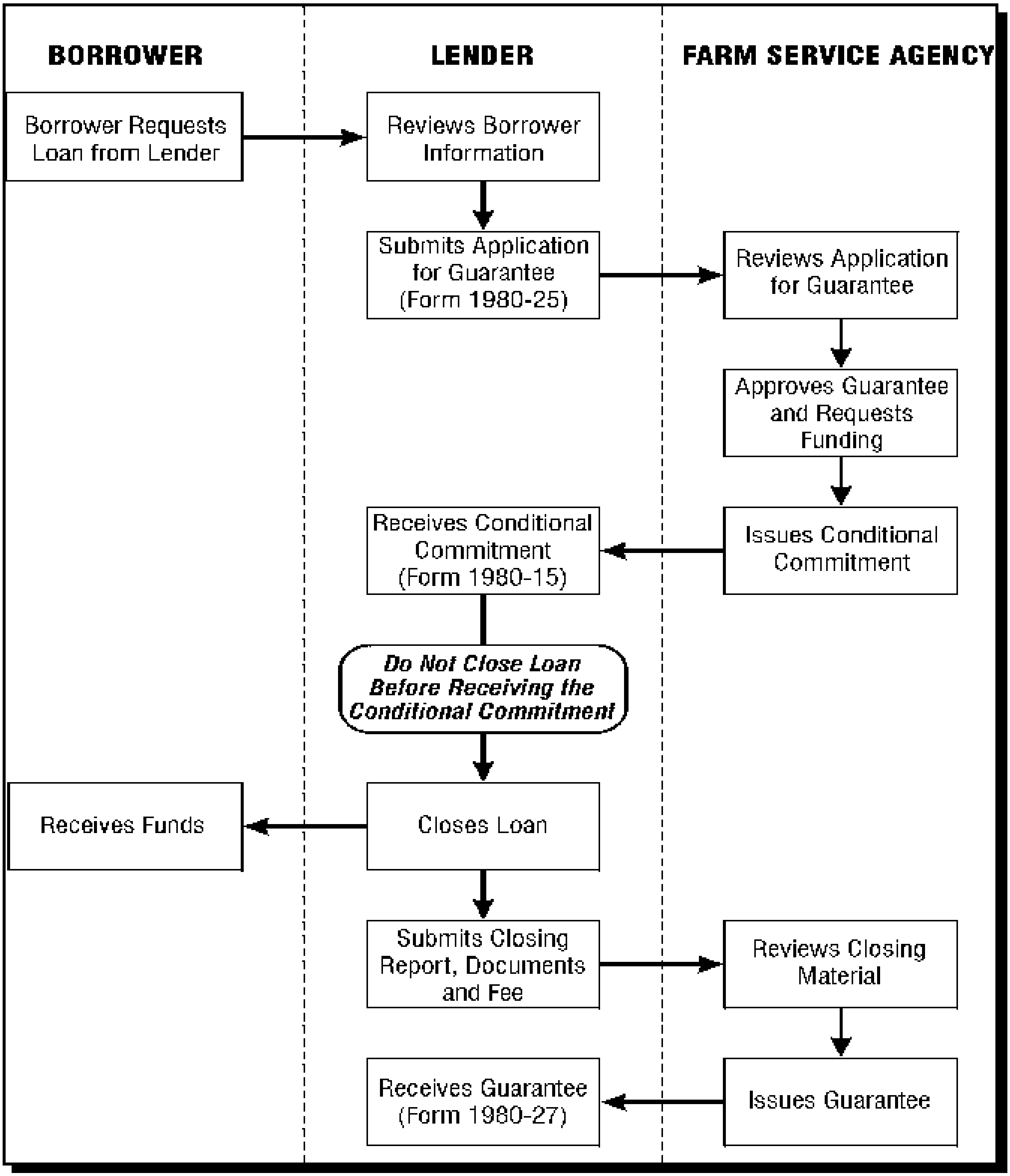
- a proposed debt repayment schedule
- a monthly cash flow budget for LOC's.

Continued on the next page

--69.7 Submission Requirements for SEL's and CLP Lenders (Continued)--

B Loan Processing Flow Chart

Following is the loan processing flow chart.



70 Application Requirements for PLP Lenders (7 CFR 762.110)

A Application Requirements

A complete application for PLP lenders will consist of:

- FSA-1980-28
- **a loan narrative**
- **any other items agreed to during the approval of the PLP lender's status and contained in the PLP lender agreement.**

PLP lenders must certify that the required items, not submitted, are in their files. On a case-by-case basis, **the Agency may request additional information from any lender or review the lender's files as needed to make eligibility and approval decisions**. These requests will be made only in situations when, because of the unique characteristics of the loan request, an eligibility or approval decision cannot be made without additional information.

FSA can conduct its environmental review in most cases without additional information from the lender. However, occasionally additional information is needed, and until this information is received, the application is not complete, and the 14-calendar-day timeframe does not start. Situations needing additional information often involve wetland determinations, potential historical or archaeological sites, or construction of major confinement livestock facilities. The review is FSA's responsibility to conduct. However, the information to complete this review is part of a complete application.

B Narrative

FSA expects PLP lenders to include a discussion of the 5 "C's" of credit; that is, character, capacity, capital, conditions, and collateral; in the narrative. The narrative prepared by PLP lenders should contain applicable information similar to ***--** subparagraph 69.5 C.**--***

For many PLP lenders, the narrative will often contain the same information submitted to the lender's loan committee. Since FSA will rely on the narrative and application form for making the loan approval decision, it is important that the narrative cover any issues or questions that may arise during the evaluation process.

71 Application Requirements for Subsequent Operating Loans

A Application Requirements

Subsequent Operating Loans within the same operating cycle do not require the ***--**complete application submission in paragraphs 69, 69.5, 69.6, 69.7, and 70.**--*** Only those items that have changed from the original application must be submitted, such as the cash flow projection.

72 Market Placement Program (7 CFR 1910.4(c))

A Purpose

The Market Placement Program is designed to assist qualified existing direct loan borrowers and new direct loan applicants in obtaining a guaranteed farm loan from a commercial lender.

B Lender Participation

Each County Office shall identify lenders who are interested in participating in the Market Placement Program. Lenders should advise FSA of their interest.

C FSA Preparation of Loan Application

--If the loan assessment completed in accordance with** the direct loan application **concludes that guaranteed assistance may be available, FSA will send** the information in the loan application **to area lenders.--

In the Market Placement Program, direct loan applications are processed under the standard direct loan procedures. *** * *** If the loan applicant is eligible and may qualify to receive a guaranteed loan, FSA shall present the completed guaranteed loan application to 1 or more lenders, selected by the loan applicant, who have expressed an interest in the Market Placement Program. The lenders are informed that FSA will guarantee a loan when an application package is presented to them.

Continued on the next page

72 Market Placement Program (7 CFR 1910.4(c)) (Continued)

C FSA Preparation of Loan Application (Continued)

The package FSA will provide to lenders will include the following:

- FSA-1980-25
- a farm plan
- a narrative
- a suggested plan for servicing
- an appraisal.

If more than 1 lender is interested in the guaranteed loan, the loan applicant shall select 1 of the lenders. The lender must prepare the loan or LOC agreement. SEL's must submit the loan or LOC agreement to FSA before FSA issues a Conditional Commitment. The Conditional Commitment shall be issued upon the lender's acceptance of the loan application and confirmation that funds are available.

73-82 (Reserved)

Part 6 Application Processing Timeframes (7 CFR 762.130)

83 Application Processing Timeframes by Lender Type (7 CFR 762.130)

A Processing Timeframes for SEL's

Complete applications from Standard Eligible Lenders will be approved or rejected, and the lender notified in writing, no later than 30 calendar days after receipt.

The counting of the 30 calendar days begins when FSA determines that the ***--**application is complete, as defined in paragraphs 69, 69.5, 69.6, and 69.7.**--***

B Processing Timeframes for CLP and PLP Lenders

Complete applications from CLP or PLP lenders will be approved or rejected not later than 14 calendar days after receipt. For PLP lenders, if this time frame is not met, the application will automatically be approved, subject to funding, and receive an 80 or 95 percent guarantee, as appropriate.

--**The counting of the 30 calendar days begins when FSA determines that the application is complete, as defined in paragraphs 69, 69.5, 69.6, 69.7 and 70.**--

If a PLP application is automatically approved, the lender must not close the loan or disburse funds until funds are obligated by FSA as evidenced by receipt of a Conditional Commitment.

84-94 (Reserved)

--

Part 7 Loan Application Completeness Review (7 CFR 762.110)

95 Initial Review

A Application Completeness Review

Each application shall be reviewed within 5 calendar days of receipt to determine whether the application is complete.

B Obvious Eligibility Issues

Each application shall be reviewed to determine whether there are any obvious reasons the loan cannot be guaranteed, such as an ineligible loan applicant or loan purpose. If it is clear that the loan cannot be guaranteed, the request should be rejected at that time.

C Requesting Environmental Information From Other Organizations

Some applications will require additional information from other USDA agencies or organizations to fulfill National Environmental Policy Act or other special law requirements.

Typically, loan applications that involve highly erodible land, wetlands, historical, or archaeological issues or major construction require information from other organizations. In these cases, FSA must notify the lender regarding the additional information required and request the needed information from the organization or Agency.

The need for this information will indicate an incomplete application and will stop the loan processing timeframes, including PLP automatic approval.

96 Complete Application (7 CFR 762.130)

A
When Application Is Complete

For purposes of determining application processing timeframes, an application will not be considered complete until all information required to make an approval decision, including the information for an environmental review, is received by the Agency.

FSA can conduct its environmental review in most cases without additional information from the lender. However, occasionally additional information is needed, and until this information is received, the application is not complete, and the timeframes do not start. Situations needing additional information often involve wetland determinations, potential historical or archaeological sites, or construction of major confinement livestock facilities. The review is FSA's responsibility to conduct. However, the information to complete this review is part of a complete application.

B
Lender Notification

The Agency will confirm the date an application is received with a written notification to the lender.

If an approval or rejection decision cannot be made within 5 calendar days, FSA will notify the lender in writing that the application is complete and the date on which that occurred. This requirement applies to all 3 types of lenders.

97 Incomplete Application (7 CFR 762.110(e))

A Initial Notification of Lender

If the application is incomplete, FSA will notify the lender in writing within 5 calendar days after receipt of the application. The letter will:

- identify the additional information required from the lender
- establish a deadline for the lender to submit the materials 20 calendar days from the date of the letter.

B Second Notification

If the lender does not respond or does not supply all of the information requested, FSA will send another letter. The second notification will address the items needed, except that the deadline for submitting additional information will be 10 calendar days.

If necessary, the lender may receive an extension to submit the additional materials.

C Automatic Withdrawal of Application

If the lender does not provide the information needed to complete its application by the deadline established in an Agency request for the information, the application will be considered withdrawn by the lender.

98-107 (Reserved)

Part 8 Loan Evaluation

Section 1 Eligibility (7 CFR 762.120)

108 General Eligibility Requirements for Farm Operating (OL) and Farm Ownership (FO) (7 CFR 762.120)

A Summary of Eligibility Requirements

A loan applicant and anyone who will execute the promissory note, including members of an entity application, must meet the following eligibility criteria to obtain a guaranteed loan. An eligible loan applicant is an applicant that:

- has not caused FSA a loss by receiving debt forgiveness on more than 3 occasions
- is not delinquent on any Federal debt
- does not have any outstanding recorded judgments obtained by the United States in a Federal court
- is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence
- has the legal capacity to incur the obligations of the loan
- has an acceptable credit history
- is not able to obtain sufficient credit elsewhere without a guarantee
- has not been convicted of planting, cultivating, growing, producing, harvesting, or storing a controlled substance within the last 5 crop years
- has not received direct or guaranteed OL's for more than 15 years.

B Clarification of Loan Applicant

In this part, the loan applicant includes any person who will execute the promissory note. In the case of an entity, the loan applicant includes all the members of the entity who will execute the promissory note.

Note: [7 CFR 762.130] For entities, the note is executed by the member who is authorized to sign for the entity, and by all members of the entity as individuals.

Continued on the next page

108 General Eligibility Requirements for Farm Operating (OL) and Farm Ownership (FO) (7 CFR 762.120) (Continued)

C
No Agency Loss

The loan applicant, and anyone who will execute the promissory note, has not caused the Agency a loss by receiving debt forgiveness on more than three occasions prior to April 4, 1996, or on any occasion after April 4, 1996, on all or a portion of any direct or guaranteed loan made under the authority of the CONACT by debt write-down, write-off, compromise under the provisions of Section 331 of the CONACT, adjustment, reduction, charge-off, or discharge in bankruptcy or through any payment of a guaranteed loss claim under the same circumstances.

A CONACT loan is any of the following loan types, whether direct or guaranteed, made by FSA or its predecessor agency (FmHA):

- FO
- OL
- SW
- Emergency (EM)
- Economic Emergency (EE)
- Emergency Livestock (EL).

Notwithstanding the preceding sentence, applicants who receive a write-down under Section 353 of the CONACT, or are current on payments under a confirmed bankruptcy reorganization plan, may receive direct and guaranteed OL loans to pay annual farm and ranch operating expenses, which includes family subsistence, if the applicant meets all other requirements for the loan.

Notes: A borrower, who has successfully completed a bankruptcy reorganization plan, will be considered to be current on the plan.

--**All debt forgiveness actions that are part of 1 transaction and occur on or about the same date are normally considered 1 occasion of debt forgiveness, regardless of the number of loans involved. Since debt forgiveness on direct loans and guaranteed loans are always considered separate transactions, concurrent forgiveness on direct and guaranteed loans are separate occasions. A single loan may have debt forgiveness on more than 1 occasion, when, for example, a borrower received a writedown and the loan was later liquidated at a loss.**--

A lender should contact the local FSA office if it is unsure of a loan applicant's eligibility.

Continued on the next page

108 General Eligibility Requirements for Farm Operating (OL) and Farm Ownership (FO) (7 CFR 762.120) (Continued)

D
Delinquency on Federal Debt

The loan applicant, and anyone who will execute the promissory note, is not delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986. Any debt under the Internal Revenue code of 1986 may be considered by the lender in determining cash flow and credit worthiness.

The loan applicant may be considered eligible if the delinquency will be remedied on or before the date of loan closing. Unless otherwise prohibited, loan applicants may use loan funds to cure delinquencies. Federal debt includes, but is not limited to, student loans, CCC loans, FSA loans, VA loans, and SBA loans. Debt under the Internal Revenue Code of 1986 is not considered Federal debt in this context.

E
Outstanding Recorded Judgments

The loan applicant, and anyone who will execute the promissory note, has no outstanding unpaid judgments obtained by the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts.

Loan applicants must pay outstanding judgments in full, except for judgments in United States Tax Courts, or otherwise satisfy the judgment to be eligible for guaranteed loans. Loans will not be approved with unresolved Federal judgments in place. Loan funds will not be used to pay Federal judgments.

F
United States Citizenship

The loan applicant is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationalization Act. Indefinite parolees are not eligible. For an entity applicant, all members of an entity must meet the citizenship test. Aliens must provide the appropriate Immigration and Naturalization Service forms to document their permanent residency.

G
Legal Capacity to Incur Loan

The loan applicant and all borrowers on the loan must possess the legal capacity to incur the obligations of the loan.

The loan applicant must be of legal age, mental capacity, and authority to enter into a legally binding agreement with the lender. An entity applicant and the entity members must be able to enter into such a contract.

Continued on the next page

108 General Eligibility Requirements for Farm Operating (OL) and Farm Ownership (FO) (7 CFR 762.120) (Continued)

H
Past Dealings

The loan applicant, in past dealings with the Agency, must not have provided the Agency with false or misleading documents or statements.

I
Credit History

The individual or entity loan applicant and all entity members must have acceptable credit history demonstrated by debt repayment. A history of failures to repay past debts as they came due when the ability to repay was within their control will demonstrate unacceptable credit history. Unacceptable credit history will not include either of the following**:**

- **isolated instances of late payments which do not represent a pattern and were clearly beyond their control**
- **lack of credit history.**

J
Test for Credit

The loan applicant is unable to obtain sufficient credit elsewhere without a guarantee to finance actual needs at reasonable rates and terms. The potential for sale of any significant nonessential assets will be considered when evaluating the availability of other credit. Ownership interests in property and income received by an individual or entity loan applicant, or any entity members as individuals also will be considered when evaluating the availability of other credit to the loan applicant.

The loan applicant's inability to obtain credit will be demonstrated when the lender certifies that they would not make the loan without a guarantee. The lender certifies this by signing the application form.

If the loan applicant has significant assets that are not essential to the farm operation, and the sale of those assets would remove the need for a guarantee, the loan applicant does not meet the test for credit requirement.

Assets and income of the entity members will also be considered when evaluating the availability of other credit to the entity applicant.

Continued on the next page

108 General Eligibility Requirements for Farm Operating (OL) and Farm Ownership (FO) (7 CFR 762.120) (Continued)

K
Controlled Substances

Neither the applicant nor any entity member has been convicted of planting, cultivating, growing, producing, harvesting, or storing a controlled substance under Federal or state law within the last five crop years. "Controlled substance" is defined at 21 CFR part 1308. Applicants must certify on the Agency application form that it and its members, if an entity, have not been convicted of such a crime within the relevant period. If the lender uses the lender's Agency approved forms, the certification may be an attachment to the form.

L
15-Year OL Time Limit

[7 CFR 762.122] No guaranteed OL shall be made to any loan applicant after the 15th year that a loan applicant, or any individual signing the promissory note, received direct or guaranteed OL.

If a borrower had any combination of direct or guaranteed OL closed in 10 or more prior calendar years, prior to October 28, 1992, eligibility to receive new guaranteed OL is extended for 5 additional years from October 28, 1992, and the years need not run consecutively. However, in the case of a line of credit, each year in which an advance is made after October 28, 1992, counts toward the 5 additional years.

Once determined eligible, a loan or line of credit may be approved for any authorized term.

Example: A 5-year LOC could be approved in the last year a borrower was eligible and advances could be made for 5 years.

Continued on the next page

108 General Eligibility Requirements for Farm Operating (OL) and Farm Ownership (FO) (7 CFR 762.120) (Continued)

M Determining Years of Eligibility for Guaranteed OL's

Loan applicants are eligible to close guaranteed or direct OL's in 15 nonconsecutive years. The following table summarizes the eligibility requirement based on the loan applicant's status on October 28, 1992, the number of years the loan applicant has received direct or guaranteed loans, and the type of loan being applied for.

IF the loan applicant...	THEN they are eligible for...
had direct or guaranteed OL's closed in 10 or more years before October 28, 1992	***--**5 years of guaranteed OL closing after**--*** October 28, 1992. 5 years - ______________ = __________ (# years loan closed *** * *** after 10/28/92) (# years remaining)
had fewer than 10 direct or guaranteed OL's closed before October 28, 1992	15 years of guaranteed OL. 15 years - ___________ = __________ (# years loan closed) (# years eligible remaining)

Notes: Subsequent year advances on LOC's before October 28, 1992, do not count as an additional year of eligibility. Before October 28, 1992, only the year in which the loan was closed is counted. However, after October 28, 1992, the subsequent advances on LOC's will be counted as a year of eligibility used.

Lenders should contact the local FSA office to determine whether the loan applicant is eligible.

109 Specific Requirements for OL's (7 CFR 762.120(i))

A Operator Requirement

For Operating Loans, the individual or entity loan applicant must be an operator of not larger than a family farm after the loan is closed.

When determining whether or not the farm meets the family farm definition, FSA shall:

- analyze all the factors that make up the regulatory definition of family farm and the items discussed in the following table
- look at all aspects and the circumstances of the farm operations.

Consider and analyze these factors and how they relate to one another. Application of judgment, combined with documentation of all the factors for the decision, should provide reasonable determinations of an applicant's qualifications as a family farm.

Item	Factor	Consideration
1	Recognized in the community as a farm	Consider how the applicant's farm operation compares to similar farm operations in the community. In most areas of the country and in most farming enterprises, the family will provide most of the day-to-day labor on a family farm. An exception may be made for enterprises that produce high-value, labor-intensive crops, such as fruit or vegetables.
2	Management and control of the farm business	All of the day-to-day management and operational decisions should be made by members of the farm family. The use of consultants, advisors, and similar experts is certainly acceptable provided someone in the farm family is the decisionmaker.
3	Amount of labor	A substantial amount of the full-time labor required must be contributed by family or entity members to the operation. The use of seasonally hired labor should not be precluded. The borrower may not necessarily perform a majority of the labor, but the amount of labor provided by the borrower is significant. One distinguishing characteristic of a family farm is that the family members provide both physical labor and management for the farm. Consider the labor requirements that are necessary for the production of specific high-value, labor-intensive crops.

Continued on the next page

109 Specific Requirements for OL's (7 CFR 762.120(i)) (Continued)

A
Operator Requirement (Continued)

Item	Factor	Consideration
4	Credit needs	Congress established FSA's loan limits to assist family-sized operations. The loan limits generally ensure that loans are made to family farm operations. It is also important that every effort be made to ensure that loans are made only when it is certain that other credit is not available. Loan participation arrangements are acceptable when FSA farm loans cannot meet the total needs; but, if maximum FSA farm loans are a small portion of the total credit requirements, this may be another indicator of a larger than family-size farm when considered with other factors, or that credit is available from another source.

B
Entity Borrower Requirements

In the case of an entity borrower:

- **the entity must be authorized to operate, and own if the entity is also an owner, a farm in the state or states in which the farm is located**
- either of the following:
  - **if the entity members holding a majority interest are related by marriage or blood, at least one member of the entity also must operate the family farm**
  - **if the entity members holding a majority interest are not related by marriage or blood, the entity members holding a majority interest must also operate the family farm.**

Note: The entity can be the operator for organizational or tax purposes in either case.

110 Specific Requirements for Farm Ownership Loans (FO) (7 CFR 762.120(j))

A
Owner and Operator Requirement

For Farm Ownership Loans, the individual must be the operator and owner of not larger than a family farm after the loan is closed.

The loan applicant, if an individual, must own the farm to obtain an FO. The factors in subparagraph 109 A will be considered when determining whether or not the farm meets the family farm definition. Farmers also may lease farm land in addition to the land they own.

B
Entity Requirements

In the case of an entity borrower:

- **the entity must be authorized to own and operate a farm in the state or states in which the farm is located**
- either of the following:
  - **if the entity members holding a majority interest are related by marriage or blood, at least one member of the entity must operate the family farm and at least one member of the entity or the entity must own the family farm**
  - **if the entity members holding a majority interest are not related by marriage or blood, the entity members holding a majority interest must operate the family farm and the entity members holding a majority interest or the entity must own the family farm.**

Note: The entity can be the operator for organizational or tax purposes in either case.

Continued on the next page

110 Specific Requirements for Farm Ownership Loans (FO) (7 CFR 762.120(j)) (Continued)

C Life Estates

FO's may be guaranteed under some circumstances when life estates are involved.

A guaranteed FO can be made to:

- both the life estate holder and the remainderman, if:
  - both have a legal right to occupy and operate the farm
  - both are eligible for the loan independently
  - both parties sign the note and lien instrument
- just the remainderman, if:
  - the remainderman has a legal right to occupy and operate the farm
  - the lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security
- just the life estate holder, if:
  - there is no restriction placed on a life estate holder who occupies and operates a farm
  - the lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

111 Eligibility Requirements for Entity Loan Applicants (7 CFR 762.120(k))

A
Individual Ownership Interest Requirement

Each entity member's ownership interest may not exceed the family farm definition limits.

B
Entity Ownership of Large Farms

The collective ownership interest of all entity members may exceed the family farm definition limits only if the following conditions are met:

- **all of the entity members are related by blood or marriage**
- **all of the members are or will be operators of the entity**
- **the majority interest holders of the entity must meet the requirements of paragraphs** 108 F, H, I, and 109 and 110 **of this section.**

The majority interest holders of the entity must meet the following requirements:

- the entity member is a citizen of the United States or an alien lawfully admitted to the United Sates for permanent residence
- the entity member, in past dealings with FSA, must not have provided FSA with false or misleading documents or statements
- the entity member has an acceptable credit history
- the entity members meet the requirements of paragraph 109 or 110.

C
Domestic Farmer or Rancher

The entity must be controlled by farmers or ranchers engaged primarily and directly in farming or ranching in the United States after the loan is made.

D
Entity Member Requirement

The entity members are not themselves entities.

112-121 (Reserved)

122 Operating Loan Purposes (7 CFR 762.121(a))

A Term Operating Loan Purposes

Loan funds disbursed under an OL guarantee may only be used for the following purposes:

- **payment of costs associated with reorganizing a farm or ranch to improve its profitability**
- **purchase of livestock, including poultry, and farm or ranch equipment or fixtures, quotas and bases, and cooperative stock for credit, production, processing or marketing purposes**
- **payment of annual farm or ranch operating expenses, examples of which include feed, seed, fertilizer, pesticides, farm or ranch supplies, repairs and improvements which are to be expensed, cash rent and family subsistence**
- **payment of scheduled principal and interest payments on term debt provided the debt is for authorized FO or OL purposes**
- **other farm and ranch needs**
- **payment of costs associated with land and water development for conservation or use purposes**
- **refinancing indebtedness incurred for any authorized OL purpose, when the lender and loan applicant can demonstrate the need to refinance**

Continued on the next page

122 Operating Loan Purposes (7 CFR 762.121(a)) (Continued)

A
Term Operating Loan Purposes (Continued)

- **payment of loan closing costs**
- **payment of costs associated with complying with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. § 655 and 667); this purpose is limited to applicants who demonstrate that compliance with the standards will cause them substantial economic injury**
- **payment of training costs required or recommended by the Agency.**

B
Real Estate Improvements

Term OL funds may be used for limited real estate improvements, so long as the loan can be repaid within 7 years. These improvements can take the form of fixtures to existing farm buildings or new building construction. Improvements financed over periods longer than 7 years, including balloon installments, are considered to be for real estate rather than operating purposes and will not be financed with OL funds.

C
Processing or Marketing Purposes

Allowable marketing costs include the purchase of quotas and expenses related to the sale of farm products produced by the borrower. FSA funds cannot be used to finance the resale of agricultural commodities produced by other farm or ranch entities.

OL funds can also be used to finance the initial processing of agricultural commodities produced by the borrower’s farm or ranch.

Examples: Examples of allowable processing activities include canning tomatoes and packaging maple syrup.

Generally, for the financing of a marketing activity to be eligible, the activity must be a natural extension of the farming operation. In determining allowable enterprises, FSA will:

- compare the relative size of revenues and expenses for the farm and nonfarm operations
- consider the portion of goods marketed or processed that the farm or ranch raises versus the portion they obtain from other entities.

Continued on the next page

122 Operating Loan Purposes (7 CFR 762.121(a)) (Continued)

D Refinancing

OL may be used to refinance existing debts when the refinancing activity will benefit the farming entity and the original loans were for authorized OL purposes.

When the guaranteed loan is to be used to refinance an unguaranteed debt that the lender has with the applicant, FSA will evaluate whether the terms of the proposed loan will improve the applicant's cash flow and likelihood of success.

E Line of Credit Purposes

Loan funds under a line of credit may be advanced only for the following purposes:

- **payment of annual operating expenses, family subsistence, and purchase of feeder animals**

  Note: Annual operating expenses include those expenses related to operations with normal production cycles exceeding 12 months, such as some aquaculture and tree crops.

- **payment of current annual operating debts advanced for the current operating cycle; under no circumstances can carry-over operating debts from a previous operating cycle be refinanced**

- **purchase of routine capital assets, such as replacement of livestock, that will be repaid within the operating cycle**

  Note: Only routine, annually recurring capital purchases may be included under LOC. These purchases must be scheduled for repayment within the operating cycle.

  Example: Operations that normally replace a certain portion of their breeding livestock each year may include these purchases under LOC.

Continued on the next page

122 Operating Loan Purposes (7 CFR 762.121(a)) (Continued)

E
LOC Purposes (Continued)

- **payment of scheduled, non-delinquent term debt payments provided the debt is for authorized FO or OL purposes**
- **purchase of cooperative stock for credit, production, processing, or marketing purposes**
- **payment of loan closing costs.**

123 Farm Ownership Purposes (7 CFR 762.121(b))

A
Farm Ownership Purposes

Guaranteed FO's are authorized only to:

- **acquire or enlarge a farm or ranch**

  Examples: **Examples include, but are not limited to:**

  - **providing down payments**
  - **purchasing easements for the loan applicant's portion of land being subdivided**
  - **participating in the Beginning Farmer Downpayment Farm Ownership program under 7 CFR 1943, subpart A.**

Note: Land acquired with FO funds must be intended for production of agricultural commodities, used as the headquarters of the farming operation, used as the primary residence of the farm owner or manager, or used to store, repair, or process farm equipment, commodities, or livestock.

Continued on the next page

A Farm Ownership Purposes (Continued)

- **make capital improvements**

  Examples: Examples include, but are not limited to, the construction, purchase, and improvement of farm dwellings, service buildings and facilities that can be made fixtures to the real estate.

  Notes: FO funds can be used to purchase or build any type of structure, including personal dwellings, related to the farming or ranching enterprise.

  ***--**When planning capital improvements, the lender shall ensure that:

  - all project facilities are designed using accepted architectural and engineering practices and conform to applicable Federal, State, and local codes and requirements
  - the project will be completed with available funds and, once completed, will be used for its intended purpose and produce products in the quality and quantity proposed in the application.**--***

  [7 CFR 762.122] When FO funds are used for improvements to leased land, the terms of the lease must provide either of the following**:**

  - **reasonable assurance that the loan applicant will have use of the improvement over its useful life**
  - **compensation for any unexhausted value of the improvement if the lease is terminated.**

- **promote soil and water conservation and protection**

  Examples: Examples include the correction of hazardous environmental conditions, and the construction or installation of tiles, terraces and waterways.

- **pay closing costs, including but not limited to, purchasing stock in a cooperative, appraisal and survey fees**
- **refinance indebtedness incurred for authorized FO or OL purposes, provided the lender and loan applicant demonstrate the need to refinance the debt.**

When the guaranteed loan is to be used to refinance an unguaranteed debt that the requesting lender has with the applicant, FSA will evaluate whether the terms of the proposed loan will improve the applicant's cash flow and likelihood of success.

124 Loan Limitations (7 CFR 762.122 and 762.121)

A Specific OL and FO Limitations

The total dollar amount of line of credit advances and income releases cannot exceed the total estimated expenses, less interest expense, as indicated on the borrower's cash flow budget, unless the cash flow budget is revised and continues to reflect a feasible plan.

The amount of loan proceeds that the lender advances plus the amount of income that the lender releases to the borrower normally cannot exceed the borrower's total planned expenses, excluding interest expense. However, additional amounts may be advanced or released if a revised feasible plan, as defined in Exhibit 2, is developed.

The Agency will not guarantee any loan made with the proceeds of any obligation the interest on which is excluded from income under Section 103 of the Internal Revenue Code of 1954, as amended. Funds generated through the issuance of tax-exempt obligations may not be used to purchase the guaranteed portion of any Agency guaranteed loan. An Agency guaranteed loan may not serve as collateral for a tax-exempt bond issue.

Many States have financing programs for, typically, beginning farmers using Tax Exempt Industrial Revenue Agricultural Bonds ("Aggie Bonds"). Because of their tax-exempt status, FSA cannot guarantee loans funded with Aggie Bonds.

The Agency will not guarantee any loan to purchase, build, or expand buildings located in a special 100 year floodplain as defined by FEMA flood hazard maps unless flood insurance is available and purchased.

If FEMA floodplain maps have not been completed, this restriction will not apply. However, if the floodplain maps have been completed for the area, but the community has chosen to not make flood insurance available, a guarantee cannot be approved for a loan to construct buildings on the floodplain or purchase farm property if buildings are located on the floodplain. A loan for refinancing or construction of buildings outside the floodplain would not be prohibited.

Continued on the next page

124 Loan Limitations (7 CFR 762.122 and 762.121) (Continued)

A Specific OL and FO Limitations (Continued)

Loans may not be made for any purpose which contributes to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity. A decision by the Agency to reject an application for this reason is appealable. An appeal questioning the presence of a wetland, converted wetland, or highly erodible land on a particular property must be filed directly with the USDA agency making the determination in accordance with the Agency's appeal procedures.

Loans may not be used to satisfy judgments obtained in the United States District courts. However, Internal Revenue Service judgment liens may be paid with loan funds.

See Part 10 for maximum loan amount limitations.

[7 CFR 762.105] Guaranteed loan funds will not be used to finance a nonfarm enterprise. Nonfarm enterprises include, but are not limited to:

- **raising earthworms, exotic birds, tropical fish, dogs, or horses for nonfarm purposes**

  Note: Raising horses for:

  - nonfarm purposes would include racing, pleasure riding, or show
  - farm purposes would include draft or cutting horses.

- **welding shops**
- **boarding horses or riding stables.**

125-134 (Reserved)

Section 3 Loan Terms, Insurance, Inspections, and Fees

135 Interest Rate Requirements (7 CFR 762.124(a))

A Fixed and Variable Rates

The interest rate on a guaranteed loan or line of credit may be fixed or variable as agreed upon between the borrower and the lender. The lender may charge different rates on the guaranteed and the non-guaranteed portions of the note. The guaranteed portion may be fixed while the unguaranteed portion may be variable, or vice versa. If both portions are variable, different bases may be used.

If a variable rate is used, it must be tied to a rate specifically agreed to between the lender and borrower in the loan instruments. Variable rates may change according to the normal practices of the lender for its average farm customers, but the frequency of change must be specified in the loan or line of credit instrument.

B Maximum Interest Rates

Neither the interest rate on the guaranteed portion nor the unguaranteed portion may exceed the rate the lender charges its average agricultural loan customer. At the request of the Agency, the lender must provide evidence of the rate charged the average agricultural loan customer. This evidence may consist of average yield data, or documented administrative differential rate schedule formulas used by the lender.

The FSA guarantee compensates a lender for much of the additional credit risk involved in providing credit to borrowers not meeting the lender's normal credit standards. If the lender's rates of interest are based on a standardized risk rating system, the rate charged an FSA-guaranteed borrower must be no higher than the rate charged a moderate risk borrower, regardless of the guaranteed borrower's equity, collateral, or repayment position.

Continued on the next page

135 Interest Rate Requirements (7 CFR 762.124(a)) (Continued)

C
Interest Charges

Interest must be charged only on the actual amount of funds advanced and for the actual time the funds are outstanding. Interest on protective advances made by the lender to protect the security will be charged at the note rate limited to subparagraph B.

Interest on protective and emergency advances, made by the lender to protect the security, must not exceed the rate specified in the loan instruments. The charge of interest on legal fees, broker's fees, and other expenses paid in conjunction with bankruptcy, liquidation, or other servicing is not covered by the guarantee.

136 Charges and Fees (7 CFR 762.124(e))

A
Loan Fees

The lender may charge the loan applicant and borrower fees for the loan provided they are no greater than those charged to nonguaranteed customers for similar transactions. Similar transactions are those involving the same type of loan requested (for example, operating loans or farm real estate loans).

Lenders may not charge a loan origination and servicing fee greater than one percent of the loan amount for the life of the loan when a guaranteed loan is made in conjunction with a down payment FO for beginning farmers under 7 CFR Part 1943, Subpart A.

FSA may request that the lender provide evidence supporting the amount of their loan fees.

Continued on the next page

136 Charges and Fees (7 CFR 762.124(e)) (Continued)

B
Late Payment Charges

Late payment charges (including default interest charges) are not covered by the guarantee. These charges may not be added to the principal and interest due under any guaranteed note or line of credit. However, late payment charges may be made outside of the guarantee if they are routinely made by the lender in similar types of loan transactions.

--**Late payment fees and prepayment penalties may be charged on guaranteed loans, if they are routinely charged by the lender on similar loans. Late payment charges, including interest on late payments, may be collected from borrowers when the borrower pays the account current or the loan is paid in full. However, late payment charges and prepayment penalties are not covered by the**-- guarantee and will not be paid by the government in the case of a loss. Ledgers that are provided to support the principal and interest included on RD-449-30, Loan Note Guarantee Report of Loss, should not include default interest or late charges.

***--C**
Guarantee Fee

A guarantee fee will be charged on all loans unless otherwise stated in this paragraph. Guarantee fees are 1 percent and are calculated as follows:

Fee = Loan Amount x % Guaranteed x .01.

The nonrefundable fee is paid to the Agency by the lender. The fee may be passed on to the borrower and included in loan funds.

The following guaranteed loan transactions are not charged a fee:

- loans involving interest assistance
- loans where a majority of the funds are used to refinance an Agency direct loan
- loans to beginning farmers or ranchers involved in the direct beginning farmer downpayment program.

Note: The beginning farmer downpayment loan program refers only to a direct FO made under FmHA Instruction 1943 A. Simply being defined as a beginning farmer will not qualify for a waiver of the fee.**--***

137 Loan Term and Payment Schedules (7 CFR 762.124(b) and (c))

A
OL's Repayment Schedule

Loan funds or advances on a line of credit used to pay annual operating expenses will be repaid when the income from the year's operation is received, except when the borrower is establishing a new enterprise, developing a farm, purchasing feed while feed crops are being established, or recovering from disaster or economic reverses.

When repayment is scheduled over a longer period, the borrower's expected income is not sufficient security. The lender must secure the loan with additional chattel or real estate security for the period of repayment.

Advances for purposes other than for annual operating expenses will be scheduled for repayment over the minimum period necessary considering the loan applicant's ability to repay and the useful life of the security, but not in excess of 7 years.

B
OL/LOC Final Maturity Date

The final maturity date for each loan cannot exceed 7 years from the date of the promissory note or line of credit agreement.

Continued on the next page

137 Loan Term and Payment Schedules (7 CFR 762.124(b) and (c)) (Continued)

C
LOC Advances

All advances on a line of credit must be made within 5 years from the date of the Guarantee.

D
FO Final Maturity Date

Each loan must be scheduled for repayment over a period not to exceed 40 years from the date of the note or a shorter period as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security.

E
Loan Note Guarantee Balloon Payments

Balloon payment terms are permitted on FO or OL subject to the following.

Extended repayment schedules may include equal, unequal, or balloon installments if needed to establish a new enterprise, develop a farm, or recover from a disaster or an economic reversal. Loans with balloon installments must have adequate collateral at the time the balloon installment comes due. Crops, livestock other than breeding livestock, or livestock products produced are not sufficient collateral for securing such a loan. The borrower must be projected to be able to refinance the remaining debt at the time the balloon payment comes due based on the expected financial condition of the operation, the depreciated value of the collateral, and the principal balance on the loan.

When conditions warrant, either FO or OL may have repayment schedules that may include equal, unequal, or balloon payments. The period of time between loan origination and a balloon installment must be no shorter than that provided to nonguaranteed customers for similar type transactions.

138 Insurance Requirements (7 CFR 762.123(a))

A
Lender Responsibilities

Lenders must require borrowers to maintain adequate property, public liability, and crop insurance to protect the lender and Government's interests.

Insurance is not required in every situation. When insurance is warranted, lenders should obtain an assignment, including crop insurance.

B
Crop Insurance

By loan closing, loan applicants must either:

- **obtain at least the catastrophic risk protection (CAT) level of crop insurance coverage, if available, for each crop of economic significance, as defined by 7 CFR Part 402**

- **waive eligibility for emergency crop loss assistance in connection with the uninsured crop. EM loan assistance under 7 CFR § 1945, Subpart D is not considered emergency crop loss assistance for purposes of this waiver and execution of the waiver does not render the borrower ineligible for EM loans.**

Insurance, including crop insurance, also must be obtained as required by the lender or the Agency based on the strengths and weaknesses of the loan.

C
Flood Insurance

Loan applicants must purchase flood insurance if buildings are or will be located in a special flood hazard area as defined by FEMA maps and if flood insurance is available.

Continued on the next page

138 Insurance Requirements (7 CFR 762.123(a)) (Continued)

C Flood Insurance (Continued)

***--**Lender regulatory agencies require use of FEMA-81-93 to determine whether a building or structure offered as security for a loan will be located in a special flood hazard area. The lender shall follow their regulator's guidance on documenting and escrowing for flood insurance.

FSA shall not approve a loan guarantee in which security offered for the loan contains a structure located in a special flood hazard area unless flood insurance is obtained under the National Flood Insurance Program. If a structure is located in a special flood hazard area and the community is not participating in the National Flood Insurance Program, the loan cannot be guaranteed. If there are no structures located in a special flood hazard area, the guarantee may be approved.**--***

139 Inspection Requirements (7 CFR 762.123(b))

A Inspection Requirements

Before submitting an application the lender must make an inspection of the farm to assess the suitability of the farm and to determine any development that is needed to make it a suitable farm.

During the inspection, the lender should determine whether the applicant has adequate property, buildings, and equipment to operate a viable farm. A summary of the farm inspection and the lender's assessment of the viability of the operation should be mentioned in the application narrative.

140-150 (Reserved)

Section 4 Credit Decision

Subsection 1 Financial Feasibility of Proposed Loan (7 CFR 762.125)

151 Determining Financial Feasibility of Loans (7 CFR 762.125)

A Purpose

This paragraph describes how SEL and CLP lenders must demonstrate that a loan applicant has sufficient financial resources to repay a guaranteed loan. PLP lenders use methods outlined in their Credit Management System to determine the financial feasibility of a loan.

B *--Feasible Plan

The loan applicant must project a feasible plan. The cash flow budget analyzed to determine feasible plan must represent the predicted cash flow of the operating cycle.

See Exhibit 2 for the definition of feasible plan.

A lender must determine whether a loan applicant has sufficient financial resources to repay a guaranteed loan. To make this determination, lenders work with the loan applicant to prepare a cash flow budget for the farm or ranch operation. As used in this part, the term "operation" includes all farm or ranch activities and income as well as all nonfarm or ranch income pledged by the loan applicant.

The cash flow budget used in the loan application must:**--***

- reflect, as closely as possible, the predicted cash flow of the operating cycle
- be documented in sufficient detail to adequately reflect the overall condition of the operation.

*** * ***

152 Calculating Projected Income and Expenses by SEL's (7 CFR 762.125)

A Purpose

SEL's must follow FSA methodology for calculating projected income and expenses. This paragraph explains the methodology SEL's must use.

B Projected Income and Expenses

For standard eligible lenders, the projected income and expenses of the *--borrower and operation used to determine a feasible plan must be--* based on the loan applicant's proven record of production and financial management.

SEL's also must use reliable or reasonable forecasted crop or livestock prices. Where available, the operation's actual production records must be used to ***--**estimate future production yields. The expenses used in the cash flow budget**--*** should be based on prior experience and be consistent with anticipated prices for similar goods and services. Projections of income from FSA Farm Programs should be prepared with assistance from FSA Farm Program staff.

The projected production yields and financial performance should not be outside of the range of the loan applicant's previous performance, unless fully documented and justified. The loan narrative must support the projected production, income, and expenses, explain any discrepancies, and support other major assumptions used in the cash flow budget.

Continued on the next page

152 Calculating Projected Income and Expenses by SEL's (7 CFR 762.125) (Continued)

C
Commodity Price Forecasts

Lenders must use price forecasts that are reasonable and defensible. Sources must be documented by the lender and acceptable to the Agency.

The lender may use price forecasts from land grant universities, other published prices, forward contracted prices, futures, or price histories of speciality crops on other commodities. The lender should use price forecasts that provide an accurate projection of commodity prices that the borrower will receive.

D
Estimating Production

Standard eligible lenders must use the best sources of information available for estimating production in accordance with this subsection when developing operating cash flow budgets.

Deviations from historical performance may be acceptable, if specific to changes in operation and adequately justified and acceptable to the Agency.

For existing farmers, actual production for the past 3 years will be utilized.

For those farmers without a proven history, a combination of any actual history and any other reliable source of information that are agreeable with the lender, the loan applicant, and the Agency will be used.

When the production of a growing commodity can be estimated, it must be considered when projecting yields.

Continued on the next page

152 Calculating Projected Income and Expenses by SEL's (7 CFR 762.125) (Continued)

E Declared Disaster

When the loan applicant's production history has been so severely affected by a declared disaster that an accurate projection cannot be made, the following applies.

- **County average yields are used for the disaster year if the loan applicant's disaster year yields are less than the county average yields. If county average yields are not available, State average yields are used. Adjustments can be made provided there is factual evidence to demonstrate that the yield used in the farm plan is the most probable to be realized.**
- **To calculate a historical yield, the crop year with the lowest actual or county average yield may be excluded, provided the loan applicant's yields were affected by disasters at least 2 of the previous 5 consecutive years.**

County or State average yields should be substituted only when the other information is not available to make an accurate projection. The objective is to arrive at a projection of the most reliable estimate of the production level the operator is expected to achieve.

F Lender's Documentation

Lenders must maintain supporting documentation for their determination of cash flow budgets in their files. The following table summarizes the loan documentation that can be used to support the cash flow budget.

Cash Flow Element	Documentation to Support Elements
Income and Expense Projections	• Historical performance data • FSA records • Extension or county data • Thorough loan narrative
Nonfarm Income	• RD-1910-5 or lender verification of income form • W-2, pay stub, telephone record, or historical performance data
Loan Balances and Payment Schedules	• FSA-440-32 or lender verification of debt form • Loan statement, credit report, or telephone record

Continued on the next page

152 Calculating Projected Income and Expenses by SEL's (7 CFR 762.125) (Continued)

G
Consistency of Farm Operating Plans

When the loan applicant has or will have a cash flow budget developed in conjunction with a proposed or existing Agency direct loan, the two cash flow budgets must be consistent.

To be consistent, the 2 plans must be of the same operation, with similar major assumptions, but they do not have to be identical.

Example: The lender and FSA may use slightly different projected prices and yields.

H
Refinancing Existing Debt

Loan guarantee requests for refinancing must ensure that a reasonable chance for success still exists. The lender must demonstrate that problems with the loan applicant's operation have been identified, can be corrected, and the operation returned to a sound financial basis.

An allowed use of guaranteed loan funds is to refinance existing debt, including direct loans and other farm loans. In many cases, refinancing existing debt is required because the borrower is experiencing financial difficulties. In these cases, requests for use of guaranteed loan funds for refinancing debt must ensure that a reasonable chance for operational success exists.

The lender must indicate in the loan narrative what the loan applicant will do differently to ensure the success of the farming operation. The lender must explore different financial options that would allow the loan applicant to achieve a ***--**feasible plan. The lender should consider adjusting the loan terms or**--*** negotiating with other creditors to adjust their loan terms or rates as needed to make the loan feasible. See Section 2 for additional information on limitations to refinancing.

Continued on the next page

152 Calculating Projected Income and Expenses by SEL's (7 CFR 762.125) (Continued)

I
Alternate Income

When a feasible plan depends on income from other sources in addition to income from owned land, the income must be dependable and likely to continue. The lender will analyze business ventures other than the farm operation to determine their soundness and contribution to the operation.

Income from custom work and seasonal or temporary positions should not be included in the cash flow budget, unless there is a history of income from similar sources or other strong evidence of likelihood.

*** * ***

153 Calculating Projected Income and Expenses by CLP Lenders (7 CFR 762.125)

A Purpose

CLP lenders are provided greater flexibility in estimating the projected income and expenses of an operation. They are not required to estimate production yields or price forecasts for crops, livestock, and livestock products.

The remainder of this paragraph explains the FSA guidelines for determining a loan applicant's income and expenses by CLP lenders.

B Using Financial History

For CLP lenders, the projected income and expenses of the borrower and operation must be based on the loan applicant's financial history and proven record of financial management.

CLP lenders must use their judgment and evaluation of the individual circumstances to determine the best method for estimating the projected income and expenses of the loan applicant. CLP lenders have the option of using the operation's production yields, as described in paragraph 152 for SEL. CLP lenders will use the loan applicant's income and other financial records. As with the use of production yields, the lender should not merely average 3 years of income figures. An average is only appropriate when there have not been major ***--**changes in the operation. If there have been major changes in yields, prices, or production, this should be considered when estimating the projected income and expenses.**--***

The lender should consider the range and trends as indicators of the capability and limitations of the operator, land, and equipment. The projection should:

- reflect what the current or proposed operation can reasonably and justifiably accomplish
- not be outside the range of historical performance unless fully justified.

The loan narrative should:

- document the method used to project income and expenses
- provide an explanation of any deviations from historical performance
- ***--**address any major changes in yields or prices.**--***

154 Determining Financial Feasibility of Loans by PLP Lenders (7 CFR 762.125)

A
Purpose

PLP lenders are not required to use the financial feasibility methods in paragraph 151. These lenders will use the methods that FSA approved at the time of PLP certification.

B
Using Internal Procedures

Notwithstanding any other provision of this section, PLP lenders will follow their internal procedures on financial feasibility as agreed to by the Agency during PLP certification.

To determine financial feasibility, PLP lenders must follow the procedures agreed to by FSA and the lender as described in the PLP Lender's Agreement. The loan narrative must contain justification for assumptions made during the determination of financial feasibility.

155-165 (Reserved)

Subsection 2 Security of the Loan

166 Amount and Quality of Security (7 CFR 762.126)

A Purpose

The lender is responsible for ensuring that proper and adequate security for the guaranteed loan is obtained and maintained. Lenders must obtain the lien position proposed in the application for each security item and perfect each lien. This paragraph explains the guidelines FSA will use in evaluating whether the lender has proposed adequate security for the guaranteed loan.

B Adequate Security

The lender is responsible for ensuring that proper and adequate security is obtained and maintained to fully secure the loan, protect the interest of the lender and the Agency, and assure repayment of the loan or line of credit.

The lender will obtain a lien on additional security when necessary to protect the Agency's interest.

The lender must determine the amount of security required to adequately secure a loan. At a minimum, FSA requires the value of the security to be at least equal to the loan amount. However, more security will be taken whenever it is available. A 1:1 loan to value ratio is not adequate when additional security is available. The adequacy of security will be judged in consideration of the total security available, prior liens, and the lender's normal practices. More security may be required if the quality of the security is low, cash flow is below average, production capability is suspect, management history is limited, or enterprise is not firmly established or is atypical for the area.

Continued on the next page

166 Amount and Quality of Security (7 CFR 762.126) (Continued)

B Adequate Security (Continued)

All security must secure the entire loan or line of credit. The lender may not take separate security to secure only that portion of the loan or line of credit not covered by the guarantee.

The lender may not require compensating balances or certificates of deposit as means of eliminating the lender's exposure on the unguaranteed portion of the loan or line of credit. However, compensating balances or certificates of deposit as otherwise used in the ordinary course of business are allowed for both the guaranteed and unguaranteed portions.

To evaluate the quality and overall adequacy of the proposed security, FSA will evaluate the lender's analysis of the security and the loan applicant's financial position. FSA may determine that more security is required to protect the Government's interests.

C Security Requirements for SEL's and CLP and PLP Lenders

The type of lender has no bearing on the type or amount of security required to adequately secure a loan. FSA will evaluate the proposed security for loan applications from SEL's and CLP and PLP lenders using the same evaluation criteria.

Continued on the next page

166 Amount and Quality of Security (7 CFR 762.126) (Continued)

D
Lien Position

All guaranteed loans will be secured by the best lien obtainable provided:

- **when the loan is made for refinancing purposes, the guaranteed loan must hold a security position no lower than on the refinanced loan**

  Note: The lender must obtain a lien on all of the collateral that secured the debt that was refinanced, and the lien position on that collateral must be no lower than that which secured the existing debt.

- **any chattel-secured guaranteed loan must have a higher lien priority (including purchase money interest) than an unguaranteed loan secured by the same chattels and held by the same lender**

  Note: Any lender, who holds an unguaranteed loan with a first lien on the ***--**same collateral proposed as primary security for a guaranteed loan,**--*** must subordinate its lien position to the guaranteed loan.

- **[7 CFR 762.140] guaranteed loan installments will be paid before unguaranteed loans held by the same lender**

- **junior lien positions are acceptable only if the equity position is strong**

  Note: In no case will a guarantee be approved, secured by a junior lien on collateral with a 1:1 loan to value ratio.

- **junior liens on crops or livestock products will not be relied upon for security unless the lender is involved in multiple guaranteed loans to the same borrower, and also has first lien on the collateral**

  Note: Junior liens on income security may be taken as security, but will be considered to have no collateral value unless the prior lien is securing an FSA-guaranteed loan to the same lender.

Continued on the next page

166 Amount and Quality of Security (7 CFR 762.126) (Continued)

D
Lien Position (Continued)

- **additional security or any loan of $10,000 or less may be secured by the best lien obtainable on real estate without title clearance or legal services normally required, provided the lender believes from a search of the county records that the loan applicant can give a mortgage on the farm and provided that the lender would, in the normal course of business, waive the title search**

  Note: This exception to title clearance will not apply when land is to be purchased.

- **when taking a junior lien, prior lien instruments will not contain future advance clauses (except for taxes, insurance, or other reasonable costs to protect security), or cancellation, summary forfeiture, or other clauses that jeopardize the Government's or the lender's interest or the borrower's ability to pay the guaranteed loan, unless any such undesirable provisions are limited, modified, waived or subordinated by the lienholder for the benefit of the Agency and the lender.**

  Note: Provisions on prior lien instruments, such as prepayment penalties, will be considered when evaluating the collateral value of the security on the guaranteed loan.

167 Identifiable Collateral (7 CFR 762.126(c))

A
Purpose

All of the collateral must be identifiable. This paragraph describes the guidelines for evaluating whether the security obtained for a guaranteed loan is identifiable.

B
Identifiable Security

The guaranteed loan must be secured by identifiable collateral. To be identifiable, the lender must be able to distinguish the collateral item and adequately describe it in the security instrument.

Example: A tractor described by its make, model, year, and serial number is identifiable collateral, while a truck that is only described as "flat-bed truck" is not identifiable collateral.

C
Equipment

Equipment should be identified by manufacturer, model, year, and serial number, where available. If this information is not available, the lender should provide a sufficient written description of the equipment so that it is easily identifiable.

D
Livestock

Livestock taken as security will be fully described, including breed, age group, and type, and will indicate the numbers in each group. This provision allows the farmer to perform routine culling and replace livestock without obtaining a release of security. The lender is responsible for ensuring that the borrower maintains the livestock numbers by periodically monitoring the livestock on the farm and ensuring that liens have not been provided to other creditors.

Particularly high value livestock can be appraised as such if the animals are clearly identified, monitored, and accounted for.

E
Real Estate

Real estate can be identified using tax lot and block numbers, full metes and bounds, or rectangular survey description or similar system. A survey is not required if the property is adequately described and determined unnecessary by the lender's internal lending policy.

168 Type of Security Required by Type of Loan (7 CFR 762.126(d))

A Purpose

The type of security obtained for a loan must be appropriate to the type of loan, and the loan terms must be consistent with the useful life of the security. This paragraph describes the guidelines for evaluating whether the type of security is appropriate for the proposed loan.

B Security Requirements

Guaranteed loans may be secured by any property if the term of the loan and expected life of the property will not cause the loan to be undersecured.

Typically, annual operating loans will be secured by crops and livestock, loans to be repaid within 2 to 7 years by breeding livestock and equipment, and loans repaid over greater than 7 years by real estate.

For loans with terms greater than 7 years, a lien must be taken on real estate.

The guidelines for short-, intermediate-, and long-term loans are as follows.

Loans	Guidelines
Short-term	Annual OL's should be secured at least by crops and livestock that will generally be sold during the term of the loan.
Intermediate-term	OL's should be secured by collateral that has a life expectancy at least as long as the loan. Loans to be repaid over a 2- to 7-year period should be secured by breeding livestock and equipment. The lender should evaluate the equipment proposed to be used for security to ensure that it will not depreciate faster than the loan is repaid.
Long-term	Loans scheduled to be repaid over more than 7 years must be secured by real estate. Anticipated depreciation of the improvements must be considered when establishing terms.

Continued on the next page

168 Type of Security Required by Type of Loan (7 CFR 762.126(d)) (Continued)

C Leasehold Properties

Loans can be secured by a mortgage on leasehold properties if the lease has a negotiable value and is subject to being mortgaged.

D Additional Personal or Corporate Guarantees

The lender or Agency may require additional personal or corporate guarantees to adequately secure the loan. These guarantees are separate from, and in addition to, the personal obligations arising from members of an entity signing the note as individuals. See paragraph 247.

If the farm operation does not have adequate security for the proposed loan, additional security, such as personal or corporate guarantees, may be used to secure the loan. Therefore, entity members may be required to pledge their personal property or other nonfarm assets. For individual loan applicants, an additional guarantee may be provided by a co-signer.

--**For entities, the instruments are executed by the member who is authorized to sign for the entity, and by all members of the entity as individuals. Individual liability can be waived by FSA for members holding less than 10 percent ownership in the entity if collectibility of the loan will not be impaired.**--

169 Multiple Security Owners and Exceptions to Security Requirements (7 CFR 762.126)

A Multiple Security Owners

If security has multiple owners, all owners must execute the security documents for the loan.

B Exceptions to Security Requirements

The Deputy Administrator for Farm Loan Programs in the National Office **has the authority to grant an exception to any of the requirements involving security, if the proposed change is in the best interest of the Government and the collectability of the loan will not be impaired.**

All requests for exception must be submitted to the National Office by the FSA State Office with a recommendation for approval. No exception will be granted without such a recommendation from the State Office.

FSA's decision on granting exceptions is final and not appealable.

170-180 (Reserved)

Subsection 3 Appraisals

181 General Requirements (7 CFR 762.127)

A Purpose

The Agency may require a lender to obtain an appraisal based on the type of security, loan size, and whether it is primary or additional security.

Appraisals are an integral part of the loan evaluation process. Additional security is collateral taken in excess of what is required to fully secure a loan.

This paragraph will discuss general appraisal requirements and the situations where appraisals are and are not required.

B General Requirements

The requirements in this paragraph apply to all 3 types of lenders.

Appraisals are not part of a complete application and guarantees may be approved by FSA, subject to the lender obtaining an acceptable appraisal. The lender is responsible for obtaining an acceptable appraisal before loan closing and FSA issuing the loan guarantee. SEL’s must provide FSA with a copy of the appraisal.

Each lender is responsible for using an appraiser who has qualifications for conducting the type of appraisals required for the transaction. Real estate appraisals must follow the requirements in USPAP.

C Situations Where Appraisals Are Required

A current appraisal (not more than 12 months old) of primary chattel security is generally required on all loans.

An appraisal for loans or lines of credit for annual production purposes that are secured by crops is only required when a guarantee is requested late in the current production year and actual yields can be reasonably estimated.

Late in the season, crop appraisals should include an inspection of the crop to estimate yield based on the actual conditions.

A current real estate appraisal is required when real estate will be primary security. Agency officials may accept an appraisal that is not current if there have been no significant changes in the market or on the subject real estate and the appraisal was either completed within the past 12 months or updated by a qualified appraiser if not completed within the past 12 months.

Continued on the next page

181 General Requirements (7 CFR 762.127) (Continued)

C
Situations Where Appraisals Are Required (Continued)

An appraisal of real estate or chattel property that reflects the value of primary security at the time the guarantee is requested is required. If the market values have been fairly consistent since the date of the appraisal, an existing appraisal up to 12 months old may be acceptable. Rapidly changing collateral values will require a more recent appraisal.

Real estate appraisals over 12 months old may be acceptable if updated and if the market and subject have seen no significant changes. USPAP requires that changes be made by the original appraiser or someone from the same appraisal firm.

D
Loan Servicing

Appraisals are required under the following loan servicing actions:

- transfer of security and assumption of debt
- debt writedown
- servicing FSA-1980-89's
- liquidation
- partial releases of security if determined necessary by FSA.

E
Situations Where Appraisals Are Not Required

Notwithstanding other provisions of this section, an appraisal is not required in the following cases:

- **for any additional security**
- **for loans of $50,000 or less if a strong equity position exists.**

Appraisals are not required on property to be taken as additional security that is clearly in excess of what is needed to fully secure the loan. The lender shall provide an estimate of value on the application form.

Appraisals may not be needed for loans of $50,000 or less if there is significant equity in the collateral being pledged. The lender shall provide at least an estimate of value. FSA shall request that an appraisal be completed if the equity position is not strong enough. This determination will be based on a review and evaluation of the amount of equity, type of collateral, and the strength of the loan applicant's balance sheet.

Continued on the next page

181 General Requirements (7 CFR 762.127) (Continued)

F
Appraisal Costs

Except for authorized liquidation expenses, the lender is responsible for all appraisal costs, which may be passed on to the borrower, or a transferee in the case of a transfer and assumption.

Appraisal costs may be deducted from security proceeds when part of authorized liquidation expenses.

182 Chattel Appraisals (7 CFR 762.127(c))

A
Techniques

The appraised value of chattel property will be based on public sales of the same, or similar, property in the market area. In the absence of such public sales, reputable publications reflecting market values may be used.

Appraisals on machinery, farm equipment, and livestock will be based on recent auction sales in the local area, where possible. However, if the number and frequency of sales is limited, it may be necessary to consult published prices.

B
Reports

Appraisal reports may be on the Agency's Appraisal of Chattel Property form or on any other appraisal form containing at least the same information.

Continued on the next page

182 Chattel Appraisals (7 CFR 762.127(c)) (Continued)

C
Appraiser Qualifications

Chattel appraisals will be performed by appraisers who possess sufficient experience or training to establish market (not retail) values as determined by the Agency.

The important qualification for chattel appraisers is the ability to establish the value of equipment as reflected at auction sales. An appraiser's qualifications can be demonstrated through their years of experience, number of appraisals performed, and any relevant education or training.

183 Real Estate Appraisals (7 CFR 762.127(d))

A
Techniques

Real estate appraisals must be completed in accordance with the Uniform Standards of Professional Appraisal Practices.

Appraisals, regardless of the size of the transaction, must be completed according to USPAP. This refers to the development of the appraisal as well as the report format.

B
Reports

Appraisals may be either a complete or limited appraisal provided in a self-contained or summary format. Restricted reports as defined in the Uniform Standards of Professional Appraisal Practices are not acceptable.

Appraisal development can be either complete or limited. Limited appraisals permit limited departure from certain USPAP standards. An example might be not using 1 of the approaches to value, if deemed unnecessary or not representative. With a limited appraisal, the appraiser must disclose the departure and have determined that the departure will not tend to mislead or confuse.

The format of the appraisal report may be either a Self-Contained or Summary. The Self-Contained Report contains all of the information significant to the property. A Summary Report contains the same information as the Self-Contained Report, but it is presented in less detail. Restricted Reports are normally only for internal use, may be simply a letter of value, have a limited amount of information, and are not acceptable for guarantee requests.

Continued on the next page

183 Real Estate Appraisals (7 CFR 762.127(d)) (Continued)

C Appraiser Qualifications

On loan transactions of $250,000 or less, the lender must demonstrate to the Agency's satisfaction that the appraiser possesses sufficient experience or training to estimate the market values of agricultural property.

An appraiser's qualifications can be demonstrated through their years of experience, number of appraisals performed, and any relevant education or training. For appraisers not certified by a State licensing body, the lender must submit the appraiser's resume to FSA for review and approval.

On loan transactions greater than $250,000, which includes principal plus accrued interest through the closing date, the appraisal must be completed by a state certified general appraiser. A loan transaction is defined as any loan approval or servicing action.

184-194 (Reserved)

Subsection 4 Maximum Loss for Percent of Loan Guarantee

195 Percent of Guarantee (7 CFR 762.129 and 762.130)

A Standard Guarantee

The percent of guarantee will not exceed 90 percent based on the credit risk to the lender and the Agency both before and after the transaction. The Agency will determine the percentage of guarantee.

All guarantees issued to CLP and PLP lenders will not be less than 80 percent.

B PLP Lenders

Most loans will be guaranteed at 90 percent of the loan amount and cannot exceed 90 percent except as described in paragraph 196. The proposed percent of guarantee will be included on FSA-1980-15, Conditional Commitment.

Complete applications from PLP lenders will be approved or rejected not later than 14 calendar days after receipt. If this timeframe is not met, the application will automatically be approved, subject to funding, and receive an 80 or 95 percent guarantee, as appropriate.

After the automatic approval, a PLP lender that had requested a higher percent of guarantee may request that FSA continue to process the request. This would be noted by the lender when returning the Conditional Commitment or by letter.

C Maximum Loss

The maximum amount the Agency will pay the lender under the loan guarantee will be any loss sustained by such lender on the guaranteed portion, including:

- **the pro rata share of principal and interest indebtedness as evidenced by the note or by assumption agreement**
- **any loan subsidy due and owing**
- **the pro rata share of principal and interest indebtedness on secured protective and emergency advances**
- **principal and interest indebtedness on recapture debt pursuant to a shared appreciation agreement. Provided that the lender has paid the Agency its pro rata share of the recapture amount due.**

196 Exception to Standard Guarantee Limits (7 CFR 762.129)

A Exceptions

The guarantee will be issued at 95 percent in any of the following circumstances:

- **the sole purpose of a guaranteed FO or OL loan is to refinance an Agency direct farm loan**

  Notes: When only a portion of the loan is used to refinance a direct Agency farm credit program loan, a weighted percentage of a guarantee will be provided.

  The guarantee will be issued at 95 percent, regardless of lender type. When only a portion of a guaranteed OL or FO will be used to refinance an FSA direct farm loan, the guarantee percent will be calculated based upon a weighted percentage of the refinanced loan to total loan, rounded up to the next whole percent. The following example demonstrates how the weighted percentage is calculated.

  A farmer has a direct loan with an outstanding balance of $90,000.
  The lender is applying for a $300,000 FO.
  The percent of guarantee on the new guaranteed loan without the refinancing is 90 percent.
  The weighted average guarantee is:

$$\frac{\text{Outstanding direct loan}}{\text{guaranteed loan amount}} \times 95\% + \frac{\text{portion of guaranteed loan not refinancing direct loan}}{\text{guaranteed loan amount}} \times \text{percent of guarantee} =$$

$$\frac{90{,}000}{300{,}000} \times 95\% + \frac{300{,}000 - 90{,}000}{300{,}000} \times 90\% = 91.5\%$$

  The weighted average guarantee must be rounded up to the next whole percent, so the guarantee in this example would be 92 percent.

Continued on the next page

196 Exception to Standard Guarantee Limits (7 CFR 762.129) (Continued)

A Exceptions (Continued)

- **when the purpose of an FO loan guarantee is to participate in the down payment loan program**

- **when a guaranteed OL is made to a farmer or rancher who is participating in the Agency's down payment loan program**

  Notes: The guaranteed OL must be made during the period that a borrower has the down payment loan outstanding.

  This down payment loan program refers only to a direct FO made according to FmHA Instruction 1943-A. Simply being defined as a beginning farmer will not qualify the applicant for a 95 percent guarantee.

- ***--**loans made under a State beginning farmer program where a memorandum of understanding between the State and USDA has been signed.**--***

197-207 (Reserved)

Section 5 Environmental and Special Laws

208 Environmental Requirements (7 CFR 762.128)

A Overview

Lenders must consider environmental issues when making guaranteed loans. FSA should consult 7 CFR Part 1940, Subpart G, "Environmental Program" for guidance on what to do to comply with the National Environmental Policy Act, on issues such as highly erodible land, wetlands, floodplains, and hazardous waste.

All lenders will assist in the environmental review process by providing information requested by FSA. In all cases, the lender must keep documentation of their investigation in the loan applicant's case file. Lenders must certify that documentation is in their files and that all applicable laws have been considered before FSA will issue a guarantee.

B Environmental Requirements

The requirements found in 7 CFR part 1940, subpart G, must be met for guaranteed OL and FO. CLP and PLP lenders may certify that they have documentation in their file to demonstrate compliance with this section. Standard eligible lenders must submit evidence supporting compliance with this section.

The Agency determination of whether an environmental problem exists will be based on:

- **the information supplied with the application**
- **the Agency official's personal knowledge of the operation**
- **environmental resources available to the Agency including, but not limited to, documents, third parties, and governmental agencies**

Continued on the next page

208 Environmental Requirements (7 CFR 762.128) (Continued)

B Environmental Requirements (Continued)

- **a visit to the farm operation when the available information is insufficient to make a determination**
- **other information supplied by the lender or loan applicant upon Agency request. If necessary, information not supplied with the application will be requested by the Agency.**

Lenders will assist in the environmental review process by providing environmental information. In all cases, the lender must retain documentation of their investigation in the loan applicant's case file.

It is FSA's responsibility to complete the proper level of environmental assessment for each loan application. The certification by the lender on FSA-1980-25 does not certify that the loan request is in full compliance with the environmental requirements. The certification only demonstrates that reasonable investigations have been completed for certain items.

C Hazardous Substances

All lenders are required to ensure that due diligence is performed in conjunction with a request for guarantee of a loan involving real estate. Due diligence is the process of evaluating real estate in the context of a real estate transaction to determine the presence of contamination from release of hazardous substances, petroleum products, or other environmental hazards and determining what effect, if any, the contamination has on the security value of the property. The Agency will accept as evidence of due diligence the most current version of the American Society of Testing Materials (ASTM) transaction screen questionnaire available from 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, or similar documentation, supplemented as necessary by the ASTM Phase I environmental site assessments form.

Continued on the next page

208 Environmental Requirements (7 CFR 762.128) (Continued)

C Hazardous Substances (Continued)

The presence of hazardous substances that have been released can reduce a property's value, because of the regulatory and cleanup costs associated with contaminated soils and groundwater. The lender is responsible for conducting a due diligence investigation on the subject property. Of concern is the presence of contamination from hazardous substances or petroleum products and their impact on the market value of the property.

The lender is expected to conduct a site visit with the loan applicant. If real estate will be taken as primary security, the lender must:

- complete the American Society of Testing and Materials' Standards e-1528, Transaction Screen Questionnaire or similar questionnaire approved by the FSA State Environmental Coordinator
- indicate on FSA-1980-25, Application for Guarantee, and explain if the questionnaire indicates a problem may exist

  Note: Lenders can attach a copy of the American Society of Testing and Materials questionnaire.

- indicate on FSA-1980-25 if the questionnaire indicates no problem was discovered
- keep the questionnaire in the borrower's case file.

The lender should submit enough information in the due diligence process so that FSA, in most cases, can perform an adequate assessment without having to visit the farm.

Continued on the next page

208 Environmental Requirements (7 CFR 762.128) (Continued)

D
Wetlands and HEL

The loan applicant must certify that they will not violate the provisions of Section 363 of the Consolidated Farm and Rural Development Act, the Food Security Act of 1985, and Executive Order 11990 relating to Highly Erodible Land and Wetlands.

Loan applicants must certify that they will not violate the highly erodible land (HEL) and wetland conservation (WC) provisions by completing and executing AD-1026 for each tract of land in which they have a farming interest. FSA must determine that loan funds will not be used for a purpose that contributes to a violation of the HEL and WC provisions. As appropriate, HEL and WC determinations will be requested from Natural Resources Conservation Service (NRCS). A conservation plan may be required if the property contains HEL. If a conservation plan is required, NRCS should be contacted to:

- determine what the conservation plan will contain
- evaluate if the applicant has the resources to carry out the plan.

FSA should consider the proposed use of loan funds, the contents of the conservation plan, if one exists, and changes in land use when determining whether a loan applicant is likely to violate HEL and WC provisions.

Continued on the next page

208 Environmental Requirements (7 CFR 762.128) (Continued)

E
Floodplains

A determination must be made as to whether there will be any potential impacts to a 100 year floodplain as defined by Federal Emergency Management Agency floodplain maps, Natural Resources Conservation Service data, or other appropriate documentation.

FSA activities must:

- avoid impacting floodplains where practicable
- mitigate potential adverse impacts to the floodplain when avoidance is not possible.

Note: The lender shall keep a copy of the appropriate floodplain map in their files.

F
Water Quality Standards

The lender will assist the borrower in securing any applicable permits or waste management plans. The lender may consult with the Agency for guidance on activities which require consultation with State regulatory agencies, special permitting or waste management plans.

FSA and the lender must ensure that loan applicants are in compliance with State Water Quality Standards. Although these standards are unique for each State, there are some types of operations that usually require special permits.

Example: Large confinement livestock operations frequently require special permits or waste management plans under State water quality laws.

Lenders are expected to:

- consult with FSA for guidance on those activities that require State agency consultation, special permitting, or waste management plans
- conduct a site visit to the loan applicant's farm

Continued on the next page

208 Environmental Requirements (7 CFR 762.128) (Continued)

F Water Quality Standards (Continued)

- indicate on FSA-1980-25, Application for Guarantee, the need for special permits or plans or if potential problems exist

  Note: If special permits or plans exist, the lender should describe them and indicate the status of the permits and plans in the application.

- indicate if no problem is evident and that the farmer is in compliance with permits and plans

- record the farm visit in the loan applicant's case file and keep copies of waste management plans and permits as appropriate.

209 National Historic Preservation Act (7 CFR 762.128(c)(3))

A Requirements

The lender will examine the security property to determine if there are any structures or archeological sites which are listed or may be eligible for listing in the National Register of Historic Places. The lender may consult with the Agency for guidance on which situations will need further review in accordance with the National Historical Preservation Act and 7 CFR § 1940, subpart G, and 7 CFR § 1901, subpart F.

FSA is required to protect property that is listed or may be eligible for listing on the National Register of Historic Places. FSA can access the current list, but needs the lender to indicate if part or all of the property may be eligible for listing.

FSA expects the lender to:

- consult with FSA for guidance on what situations will need further review

  Examples: Structures over 50 years old, structures of any age with significant historical or archaeological value, and Indian burial grounds.

Continued on the next page

209 National Historic Preservation Act (7 CFR 762.128(c)(3)) (Continued)

A Requirements (Continued)

- examine the farm property and question the owner, if available, or local historical society or group
- indicate on FSA-1980-25 and describe, include a picture if available, if property has structures or archaeological sites that may be eligible for listing in the National Register
- indicate on FSA-1980-25 if the property has no structures or archaeological sites that may be eligible
- document in the loan applicant's case file records of site visit and consultation regarding the presence or absence of historical or archaeological property
- provide information, as necessary, to FSA for use in completing the environmental assessment.

210 Equal Opportunity and Nondiscrimination (7 CFR 762.128(d))

A Equal Opportunity and Nondiscrimination

With respect to any aspect of a credit transaction, the lender will not discriminate against any applicant on the basis of race, color, religion, national origin, sex, marital status, or age, provided the applicant can execute a legal contract. Nor will the lender discriminate on the basis of whether all or a part of the applicant's income derives from any public assistance program, or whether the applicant in good faith, exercises any rights under the Consumer Protection Act.

Determinations of whether a guaranteed lender or contractor has discriminated against a loan applicant or borrower, or otherwise violated ECOA, will not be made by FSA.

Continued on the next page

210 Equal Opportunity and Nondiscrimination (7 CFR 762.128(d)) (Continued)

B Construction Contracts

Where the guaranteed loan involves construction, the contractor or subcontractor must file all compliance reports, equal opportunity and nondiscrimination forms, and otherwise comply with all regulations prescribed by the Secretary of Labor pursuant to Executive Orders 11246 and 11375.

211 Other Federal, State, and Local Requirements (7 CFR 762.128(e))

A Other Requirements

Lenders are required to coordinate with all appropriate Federal, State, and local agencies and comply with special laws and regulations applicable to the loan proposal.

212-222 (Reserved)

Part 9 Interest Assistance Program (7 CFR 762.150)

223 Purpose of Interest Assistance Program

A
Purpose

The interest assistance program enables lenders to provide credit to operators of family farms who do not have the financial resources to meet the standard repayment terms. Under this program, FSA enters into an agreement with the lender to reimburse the lender 4 percentage points on the loan, in exchange for the lender reducing the interest rate charged to the borrower.

224 General Rules (7 CFR 762.150(b))

A
Eligibility

IA can be provided to both new and existing borrowers for OL and FO; however, funding is generally only available for new OL as described in subparagraph 226 A. ***--** Loan applicants can obtain interest assistance to achieve a feasible plan if they meet all other eligibility requirements. Existing borrowers may obtain interest assistance if their financial position deteriorates and they no longer can project a feasible plan at their current rates and terms.**--***

Important: Funding is available for very few existing guaranteed loans. Check with the local FSA office for funds availability.

The borrower must be an operator of not larger than a family size farm.

B
Repayment Terms

The typical term of scheduled loan repayment will not be reduced solely for the purpose of maximizing eligibility for interest assistance. To be eligible for interest assistance, a loan/line of credit must be scheduled over the maximum terms typically used by lenders for similar type loans within the limits set by paragraph 137**. At a minimum, loans will be scheduled for repayment over the terms listed below, but for OL not to exceed the life of the security:**

- **OL for the purpose of providing annual operating and living expenses will be scheduled for repayment when the income is scheduled to be received from the sale of the crops, livestock, and livestock products which will serve as security for the loan**

Continued on the next page

224 General Rules (7 CFR 762.150(b)) (Continued)

B
Repayment Terms (Continued)

- **OL for purposes other than annual operating and living expenses (i.e. equipment, livestock, refinancing of existing debt) will be scheduled over 7 years from the effective date of the proposed interest assistance agreement**

  Note: Balloon installments are not prohibited if longer terms are needed.

- **FO secured by real estate, 20 years from the closing date of the original note covered by the guarantee.**

C
Interest Rates

The lender may charge a fixed or variable interest rate. The type of rate must be the same as the type of rate in the underlying note or line of credit agreement. The lender will reduce the interest rate charged the borrower's account by at least the amount of interest assistance.

The interest rate that the lender will charge, as well as any base rate and points, must be clearly indicated in the application.

The lender and borrower may change the interest rate on the loan at anytime as provided in paragraph 284.

D
*** * * Feasible Plan**

***--The lender must document that a feasible plan is not possible without--* reducing the interest rate on the borrower's loan and with the debt restructured over the term of repayment cited above.**

*** * ***

For new loans, **a borrower's new guaranteed loan is eligible for interest assistance if all the following conditions are met.**

- ***--The applicant needs interest assistance in order to achieve a feasible plan.--***

Continued on the next page

224 General Rules (7 CFR 762.150(b)) (Continued)

D Feasible Plan (Continued)

- **If significant changes in the borrower's cash flow budget are anticipated after the initial 12 months, then the typical cash flow budget must demonstrate that the borrower will still have a feasible plan following the anticipated changes, with or without interest assistance.**

- ***--**A borrower may qualify for interest assistance with either an initial or a typical cash flow budget where cash inflows are less than outflows. If the initial cash flow budget shows inflows greater than outflows, but the typical cash flow budget shows outflows greater than inflows, then the loan may be obligated as a subsidized loan and a 0 percent subsidy placed on the loan for the first year. Subsequent year reviews will be conducted normally to determine whether to approve an increase in subsidy.**--***

- If a feasible plan cannot be achieved, the lender may ask other creditors to voluntarily adjust their debts. If other creditors adjust their debts and a feasible plan can be achieved with interest assistance, then interest assistance may be approved.

- **If a feasible plan cannot be achieved, even with other creditors voluntarily adjusting their debts and with the interest assistance, the interest assistance request will not be approved.**

The following apply for existing guaranteed loans not currently under an Interest Assistance Agreement:

- **An existing guaranteed loan is eligible for interest assistance if the borrower needs interest assistance to achieve a feasible plan and the borrower meets the eligibility criteria of** Part 8, Section 1**, except the provision regarding prior debt forgiveness** (subparagraph 108 C)**.**

- **If a borrower has multiple loans, interest assistance may be provided on one or each loan, as available, to the extent necessary to achieve a feasible plan.**

- **If a feasible plan cannot be achieved, even with other creditors voluntarily adjusting their debts and with the interest assistance, the Interest Assistance request will not be approved.**

Continued on the next page

224 General Rules (7 CFR 762.150(b)) (Continued)

E
Term of Interest Assistance Agreement

The term of the interest assistance agreement under this section shall not exceed 10 years from the date of the first interest assistance agreement signed by the loan applicant, including entity members, or the outstanding term of the loan, as limited by this section, whichever is less.

The term is limited by the first FSA-1980-64, Interest Assistance Agreement.

Interest assistance agreements shall be approved for a term not in excess of 10 years minus the period of time since the first interest assistance agreement was signed.

Note: The period of time a borrower was subject to an Interest Rate Buydown Agreement will not be considered in this limitation.

Transition Rule: Borrowers with interest assistance agreements signed before February 12, 1992, may be considered for an additional 3 years of assistance under the exception authority in paragraph 232.

F
Nonessential Assets

The lender must determine whether the borrower, including members of an entity, owns any significant assets which do not contribute directly to essential family living or farm operations. The lender must determine the market value of these assets and prepare a cash flow budget based on the assumption that the value of these assets will be used for debt reduction. If a *--feasible plan can then be achieved, the borrower is not eligible for--* interest assistance. All interest assistance calculations will be based on the cash-flow budget which assumes that the assets will be sold.

---

225 Application Requirements (7 CFR 762.150(a))

A Applying for Interest Assistance

To apply for interest assistance, the lender shall submit:

C **for new guaranteed loans:**

C***--a completed cash flow budget and interest assistance needs analysis--* portion of the application form**

Note: Interest Assistance can be applied to each loan, only to one loan or any distribution the lender selects; however, interest assistance is only available on as many loans as necessary to *--achieve a feasible plan.--*

C **for loans with unequal payments, a proposed debt repayment schedule which shows principal and interest payments for the subject loan, in each year of the loan**

C **for existing guaranteed loans not currently under an Interest Assistance Agreement:**

C***--a completed cash flow budget and interest assistance needs analysis--* portion of the application form**

Note: Interest assistance can be applied to each loan, only to one loan or any distribution the lender selects as required to achieve a feasible plan.

C **for loans with unequal payments, a proposed debt repayment schedule which shows scheduled payments for the subject loan in each of the remaining years of the loan.**

*** * ***

Note: Requests for interest assistance on lines of credit or loans made for annual operating purposes must be accompanied by a projected monthly cash flow budget.

226 Approving or Denying Interest Assistance Requests

A Approving Interest Assistance Requests

Because of funding limitations, interest assistance may be approved for the following:

- for new loans, OL's only
- for existing loans, either of the following:
  - OL's or FO's that were originally obligated with interest assistance
  - OL's or FO's obligated on or before September 30, 1991.

B Denying Interest Assistance Requests

If the loan applicant is found ineligible for the Loan Guarantee or the guarantee cannot be approved for other reasons, FSA will notify the lender and loan applicant.

If the request for guarantee can be approved or has previously been approved and the request for interest assistance is denied, the lender will be notified.

227 Interest Assistance Closing (7 CFR 762.150(c))

A Closing Requirements

Initial guaranteed loans will be closed in accordance with Part 10. Interest assistance will be closed according to this table.

Step	Action
1	**The lender will prepare and deliver to the Agency a closing report** (RD-1980-19) **for each initial and existing guaranteed loan which has been granted interest assistance.**
2	**When all requirements have been met, the lender and the Agency will execute an interest assistance agreement** (FSA-1980-64)**.** C An original FSA-1980-64 will be prepared by FSA for each note or LOC agreement executed. C***--**FSA-1980-64 will be executed even if there is a 0 percent subsidy for the first year.**--*** C All originals of FSA-1980-64 will be provided to the lender and attached to the note with the original guarantee.

228 Annual Request for Interest Assistance Payment or Continuation (7 CFR 762.150)

A Request for Interest Assistance Payment and Renewal

Within 60 calendar days of the annual review date, the lender shall submit the following to FSA:

- for payment claim information:
  - FSA-1980-24

    Notes: FSA-1980-24 shall be used to both request payment for the previous year and document the need for interest assistance for the coming year.

    Lenders shall provide FSA with an Electronic Funds Transfer account number so the payment may be transmitted to them electronically.
  - a detailed statement of activity, including all disbursements and payments applied to the loan or LOC account
  - **detailed calculations of average daily principal balance during the claim period**
- for a continuation of interest assistance:
  - **a summary of the operation's actual financial performance in the previous year, including a detailed income and expense statement**
  - **a narrative description of the causes of any major differences between the previous year's production and actual performance**

  Note: For all interest assistance agreements exceeding 12 months, the lender will perform an analysis of the applicant's farming operation and need for continued interest assistance.

Continued on the next page

228 Annual Request for Interest Assistance Payment or Continuation (7 CFR 762.150) (Continued)

A Request for Interest Assistance Payment and Renewal (Continued)

- **a current balance sheet**
- **a cash flow budget for the period being planned**

  Note: A monthly cash-flow budget is required for all lines of credit and OL's made for annual operating purposes. All other loans may include either an annual or monthly cash flow budget.

- **a copy of the interest assistance needs analysis portion of the application form which has been completed based on the planned period's cash flow budget.**

B Final Request for Payment

Upon full payment of the note or line of credit, the lender will immediately prepare the request for interest assistance payment and submit it to the Agency.

The final claim period may be less than 12 months.

C Final Interest Assistance Requests From Liquidated Accounts

Final interest assistance claims must be submitted concurrently with the submission of any estimated loss claims, which cause interest to cease to accrue, or with final loss claims.

Continued on the next page

228 Annual Request for Interest Assistance Payment or Continuation (7 CFR 762.150) (Continued)

D Rules for Interest Assistance Claims

No claim period can exceed 12 months. The initial and final claim periods may be less than 12 months. In such claims, the 4 percent payment will be prorated over the number of days in the claim period. The period for all other claims must be 12 months.

- The initial claim will cover the entire period between the effective date of the agreement and the annual review date.
- Subsequent requests must cover 12-month periods of interest assistance, and must be prepared by the lender and submitted within 60 calendar days after the annual review date.

To permit the borrower to prepare for the upcoming year, a claim should be filed within 60 days of each anniversary date. Claims not filed within 1 year will not be paid and the amount due the lender is permanently forfeited.

--**FSA-1980-24 should be submitted even if the claim amount is 0.**--

If a claim is submitted without an interest assistance review, when it is required, the claim will not be processed until the review is submitted by the lender.

Interest assistance claims shall be submitted concurrently with the submission of estimated loss claims where interest accrual ceases, or final loss claims that are not preceded by an estimated loss claim.

E Rules for Continuation of Interest Assistance

A request for continuation of Interest Assistance will be completed for 12 month periods, effective on the anniversary date.

The initial review may be submitted in conjunction with any claim within the initial 12 month period. The anniversary date and length of the review period will be stated on the interest assistance agreement. Any request for interest assistance adjustment submitted effective any time other than the review date will be denied, except for those cases where it is necessary to service the loan with rescheduling, reamortization, deferral or writedown.

Continued on the next page

228 Annual Request for Interest Assistance Payment or Continuation (7 CFR 762.150) (Continued)

E Rules for Continuation of Interest Assistance (Continued)

The loan will be eligible for continuation of interest assistance if a feasible plan, including interest assistance, can be projected for the plan period.

To continue interest assistance, the cash flow budget must project that a ***--**feasible plan is not possible without subsidy, but at least a feasible plan can be achieved with 4 percent subsidy.

Note: Interest assistance can be paid on as many loans (covered by an Interest Assistance Agreement) as necessary to achieve a feasible plan.**--***

If the evaluation indicates that the borrower needs a level of interest assistance greater than 4 percent to project a feasible plan, then the Agency will deny the continuation of interest assistance. Interest assistance will be reduced to zero during that review period. The lender will be notified according to paragraph 244.

If the review is not completed and submitted to the Agency within 1 year of the review date, no claim will be paid for that period.

F FSA Review of Request for Interest Assistance Payment

Follow this table for the review of request for interest assistance payment.

Step	Action
1	**The Agency will review the claim and the supporting documentation** within 3 workdays of receipt**. If the information and the supporting documentation is not complete and correct, the Agency will notify the lender in writing of the actions needed to correct the request.**
2	FSA will complete the appropriate portion of FSA-1980-24, Request for Interest Assistance Payment, to reflect the amount of interest assistance approved for the coming year.
3	The original will be returned to the lender for attachment to the original FSA-1980-64.

229 Notification of Adverse Action

A
Notification of FSA Action

The lender will be notified in writing of all Agency decisions in which a request for interest assistance, a request for continuation of interest assistance or lender's claim for interest assistance are denied. The notification letter will provide specific reasons for the decision and appeals will be handled in accordance with parts 11 and 780 of this title.

230 Servicing of Loans Covered by Interest Assistance Agreements (7 CFR 762.150(g))

A
Consolidation of Loans

Loans covered by Interest Assistance Agreements cannot be consolidated.

B
Transfer and Assumption

Interest assistance payments shall cease upon the assumption and transfer of the loan if the transferee was not liable for the debt on the effective date of the interest assistance agreement. The lender shall request payment through the date of the transfer or assumption. The claim must be submitted within 1 year or it will be denied and the payment permanently forfeited.

The loan will be transferred with the interest assistance agreement only in cases where the transferee was liable for the debt at the time the interest assistance was granted. Under no other circumstances will the interest assistance be transferred. If interest assistance is necessary for the transferee *--to achieve a feasible plan, the lender may request such assistance, which may be approved if interest assistance funds are available and the applicant is eligible. The maximum length of the agreement will be 10 years from the date of the first agreement covering a loan for which the transferee was liable. If Interest Assistance is necessary for a feasible plan and funds are--* not available, the request for assumption of the Agency guaranteed debt will be denied.

Continued on the next page

230 Servicing of Loans Covered by Interest Assistance Agreements (7 CFR 762.150) (Continued)

C
Loan Writedowns

When consideration is given to using a debt writedown to service a delinquent account, the subsidy level will be recalculated prior to any writedown. If a feasible plan can be obtained using interest assistance and funds are available, then the interest assistance will be authorized and no writedown will be approved. If a feasible plan cannot be achieved using 4 percent interest assistance, all further calculations for determining debt writedown eligibility and amounts to be written down will be based on the borrower receiving no interest assistance. If debt writedown is approved, the interest assistance claim for the previous review period will be processed in conjunction with the writedown loss claim. The interest assistance agreement will not be canceled and the anniversary date can remain the same or be re-established under the same guidelines that it was originally established. Interest assistance will continue with a 0 subsidy amount for the first year of the writedown. **If the lender determines through its annual analysis that interest assistance is necessary for a feasible plan, a request to reinstate the subsidy in a subsequent review period may be submitted in accordance with** subparagraph 228 A.

D
Reamortization, Rescheduling, or Deferral of Loans

In the event of rescheduling or deferral of loans with interest assistance, interest assistance will remain available for that loan under the terms of the existing interest assistance agreement. Additional years of interest assistance and increases in the restructured loan amount will require additional funding. If the additional interest assistance is needed in order to produce a feasible plan throughout the life of the rescheduled loan and funds are not available for the additional interest assistance, then the rescheduling will not be approved by the Agency. In no case will the subsidy be extended more than 10 years from the effective date of the first interest assistance agreement signed by the loan applicant or by anyone who signed the note or line of credit agreement. Rescheduling or deferral will only be processed in conjunction with a claim, effective on the claim date or anniversary date. A review will be completed, in accordance with subparagraph 228 A**. The anniversary date can remain the same or be re-established under the same guidelines that it was originally established.**

Continued on the next page

E Reorganization Bankruptcy

In cases where the interest on a loan covered by an interest assistance agreement is reduced by court order in a reorganization plan under the bankruptcy code, the interest assistance agreement will be terminated effective on the date of the court ordered interest reduction. The lender will file a claim due through the effective date of the court ordered interest reduction. Guaranteed loans which have had their interest reduced by bankruptcy court order are not eligible to receive interest assistance.

F Repurchase From Holder

For Loan Guarantees held by holders, Agency purchase of the guaranteed portion of a loan will stop interest assistance payments on that portion. Interest assistance payments will cease upon termination of the Loan Guarantee, upon reaching the expiration date set forth in the agreement or upon cancellation by the Agency.

G Requesting Interest Assistance for Delinquent Accounts

When a borrower defaults on a loan, interest assistance may be considered in conjunction with a rescheduling action in accordance with § 762.145 (b). After the meeting required by § 762.143 (b)(3) and consideration of actions to correct the delinquency, the lender will notify the Agency of the results of the meeting. If the restructuring proposal includes interest assistance, the lender will provide the items required by paragraph (d) of this section in addition to those items required by § 762.145. Liquidation must not be initiated, except in accordance with § 762.145 (b)(3)(v).

H Adjustment of Assistance Between Review Dates

After the initial or renewal request for interest assistance is processed, no adjustments can be made until the next review or adjustment date except when necessary to service the loan with a rescheduling or deferral.

Continued on the next page

230 Servicing of Loans Covered by Interest Assistance Agreements (7 CFR 762.150) (Continued)

I
Excessive Interest Assistance

Upon written notice to the lender, borrower, and any holder, the Agency may amend or cancel the interest assistance agreement and collect from the lender any amount of interest assistance granted which resulted from incomplete or inaccurate information, an error in computation, or any other reason which resulted in payment that the lender was not entitled to receive.

J
Substitution of Lenders

If there is a substitution of lender, a claim for the first lender's interest assistance, through the effective date of the substitution, will be submitted by the first lender and processed at the time of the substitution.

- Interest assistance will continue automatically through the review date.
- The new lender must:
  - request the remaining interest assistance for that period
  - document the need for continued interest assistance within 60 calendar days after the review date.

231 Cancellation of FSA-1980-64 (7 CFR 762.150(h))

A
Condition for Cancellation

The Interest Assistance Agreement is incontestable except for fraud or misrepresentation, of which the lender and borrower have actual knowledge at the time that the interest assistance agreement is executed, or which the lender or borrower participates in or condones.

If FSA determines that the lender or borrower fraudulently completed FSA-1980-64 or misrepresented information on FSA-1980-64 or supporting documentation, FSA shall cancel FSA-1980-64 and collect any subsidy that has been paid up to the point this fraud was discovered.

232 Exceptions to Interest Assistance Requirements (7 CFR 762.150(k))

A Exceptions

The Deputy Administrator for Farm Loan Programs in the National Office **has the authority to grant an exception to any requirement involving interest assistance, if it is in the best interest of the Government.**

All requests for exception must be submitted to the National Office by the FSA State Office with a recommendation for approval. No exception will be granted without such a recommendation from the State Office.

FSA's decision on granting exceptions is final and not appealable.

233-243 (Reserved)

Part 10 Processing Approvals and Issuing the Guarantee

244 Loan Approval (7 CFR 762.122)

A
Loan Limits

The maximum FO or OL levels outlined below include the guaranteed loan being made plus any outstanding direct or guaranteed principal balances, as indicated, owed by anyone who will sign the promissory note.

The total outstanding combined guaranteed FO and OL principal balance *--cannot exceed $717,000.

The total outstanding direct and guaranteed FO principal balance cannot exceed $717,000.

The total outstanding direct and guaranteed OL principal balance cannot exceed $717,000.

The total combined outstanding direct and guaranteed FO and OL balance cannot exceed $917,000.--*

B
Lender Notification of FSA Decision

The lender will be informed of the approval decision in writing.

- If the application is approved and funds are available, FSA will prepare FSA-1980-15, Conditional Commitment, to the lender and proceed to paragraph 246.

- If the application is approved and funds are not available, FSA will prepare a letter to the lender with a copy to the loan applicant, informing them the loan is approved, subject to the allocation of funding. This letter will inform the lender that the loan should not be closed until they receive FSA-1980-15, Conditional Commitment.

- If the application is rejected, FSA will prepare a letter to the lender with a copy to the applicant informing them the loan is rejected, the reasons for rejection, and their right to appeal the decision.

245 Agency Obligation of the Loan (7 CFR 762.130)

A
Loan Obligation

Loans are approved subject to the availability of funding. When it appears that there are not adequate funds to meet the needs of all approved loan applicants, applications that have been approved will be placed on a preference list according to the date of receipt of a complete application.

FSA will not issue FSA-1980-15, Conditional Commitment, until verification is received that funds have been obligated for the loan.

If a PLP lender receives an automatic approval of a loan because of FSA's failure to meet the 14-calendar-day response deadline, the lender may not close the loan until it receives the Conditional Commitment. This will be the notification that funds have been obligated.

Continued on the next page

245 Agency Obligation of the Loan (7 CFR 762.130) (Continued)

B Funding Priorities

If approved applications have been received on the same day, the following will be given priority:

- **an application from a veteran**
- **an application from an Agency direct loan borrower**
- **an application from a loan applicant who** is described by 1 of the following**:**
  - **has a dependent family**
  - **is an owner of livestock and farm implements necessary to successfully carry out farming operations**
  - **is able to make down payments**
- **any other approved application.**

When funds become available, applications will be funded in priority list order. If a substantial amount of time has elapsed between loan approval and obligation, FSA may request updated information on the loan applicant.

246 Lender's Response to Conditional Commitment (7 CFR 762.130(c))

A Accepting or Rejecting Conditions

The lender must meet all of the conditions specified in the Conditional Commitment **to secure final Agency approval of the guarantee. The lender, after reviewing the conditions listed on the** Conditional Commitment**, will complete, execute, and return the form to the Agency. If the conditions are not acceptable to the lender, the Agency may agree to alternatives or inform the lender and the loan applicant of their appeal rights.**

When the lender receives the Conditional Commitment, it should carefully review all the conditions. If the lender accepts all the conditions, it should complete, sign, and return the Conditional Commitment to FSA.

If the lender rejects the conditions, the lender may propose new conditions, along with justification for the conditions. The lender will be notified if FSA can accept the lender proposed conditions or contacted to see if acceptable conditions can be mutually developed. If an agreement is reached, FSA will incorporate the conditions into a Conditional Commitment. If, after all reasonable efforts have been made, an agreement cannot be reached, FSA will issue a rejection letter and inform the lender of their appeal rights.

If a PLP lender receives an 80 percent guarantee as a result of FSA not acting within 14 calendar days, the lender may either accept the 80 percent guarantee without conditions or request a greater guarantee. When a greater guarantee is requested, FSA may, if warranted, include additional conditions in a revised Conditional Commitment. The lender may either accept these conditions, reject the conditions and reach agreement on proposed alternative conditions, or reject the conditions and retain the 80 percent guarantee.

Continued on the next page

246 Lender's Response to Conditional Commitment (7 CFR 762.130(c)) (Continued)

B Executing and Extending FSA-1980-15

Once the lender executes the Conditional Commitment, it must be returned to FSA for final processing. Once both parties execute the document, the lender may proceed to close the loan within the timeframe allotted in the Conditional Commitment. If an extension is needed, FSA may grant an extension in writing to the lender. Before issuing an extension, FSA will consider whether enough time has passed that would justify updated financial information or an updated application.

247 Actions Before Issuing Loan Guarantee (7 CFR 762.130)

A Lender's Actions

After loan closing, the lender must submit the following to FSA before it will issue FSA-1980-27, Loan Guarantee:

- FSA-1980-22, Lender Certification
- RD-1980-19, Guaranteed Loan Closing Report
- an acceptable appraisal from SEL's, if the guarantee was approved, subject to an appraisal

  Note: SEL's are encouraged to submit this appraisal to FSA before loan closing to ensure compliance with FSA requirements.

- guarantee fee

  Notes: A guarantee fee will be charged on all loans unless otherwise stated in this paragraph. **Guarantee fees are 1 percent and are calculated as follows:**

  Fee = Loan Amount x % Guaranteed x .01.

  The nonrefundable fee is paid to the Agency by the lender. The fee may be passed on to the borrower and included in loan funds.

  The following guaranteed loan transactions are not charged a fee:

  - **loans involving interest assistance**
  - **loans where a majority of the funds are used to refinance an Agency direct loan**

Continued on the next page

247 Actions Before Issuing Loan Guarantee (7 CFR 762.130) (Continued)

A Lender's Actions (Continued)

- **loans to * * * farmers or ranchers involved in the direct beginning farmer downpayment program**

  Note: The beginning farmer downpayment loan program refers only to a direct FO made under FmHA Instruction 1943-A. Simply being defined as a beginning farmer will not qualify for a waiver of the fee.

- ***--**loans made under a State beginning farmer program where a memorandum of understanding between the State and USDA has been signed.**--***

- a copy of the executed promissory note or loan agreement

  Note: The lender will use its own promissory notes, line of credit agreements, real estate mortgages (including deeds of trust and similar instruments), and security agreements (including chattel mortgages in Louisiana and Puerto Rico), provided:

  - **the forms meet Agency requirements**
  - **documents comply with State law and regulation**
  - **the principal and interest repayment schedules are stated clearly in the notes and are consistent with the conditional commitment**
  - **the note is executed by the individual liable for the loan**

    Note: For entities, the note is executed by the member who is authorized to sign for the entity, and by all members of the entity as individuals. Individual liability can be waived by the Agency for members holding less than 10 percent ownership in the entity if the collectability of the loan will not be impaired.

  - **when the loan purpose is to refinance or restructure the lender's own debt, the lender may continue to use the existing debt instrument and attach an allonge that modifies the terms of the original note.**

- a current FSA-1980-38, Lender's Agreement, must be on file with FSA. If a current agreement is not on file, one must be executed before a guarantee is issued.

Continued on the next page

247 Actions Before Issuing Loan Guarantee (7 CFR 762.130) (Continued)

A Lender's Actions (Continued)

In addition, the lender should take the following actions.

- Inform FSA of the lender's plans to market the loan to the secondary market. These plans must be consistent with Part 15. LOC's may be funded in participation with other lenders, but may not be sold into the secondary market.

- **The lender must notify the Agency of any scheduled inspections during construction and after the guarantee has been issued. The Agency may attend these field inspections. Any inspections or review performed by the Agency, including those with the lender, are for the benefit of the Agency only. Agency inspections do not relieve any other parties of their inspection responsibilities, nor can these parties rely on Agency inspections in any manner.**

248 Issuing Loan Guarantee

A Action

Once the requirements of paragraph 247 have been met, FSA will prepare and issue FSA-1980-27, Loan Guarantee. The original Loan Guarantee will be provided to the lender to be attached to the original note.

249 (Reserved)

250 Replacing or Terminating Loan Guarantee (7 CFR 762.101 and 762.130)

A
Replacing Loan Guarantee

If the guarantee or assignment guarantee agreements are lost, stolen, destroyed, mutilated, or defaced, except where the evidence of debt was or is a bearer instrument, the Agency will issue a replacement to the lender or holder upon receipt of acceptable documentation, including a certificate of loss or an indemnity bond. It is the responsibility of the lender to coordinate the replacement activities with the holder and submit the required documents to the State Office for processing.

B
Terminating FSA-1980-27

The Loan Guarantee will automatically terminate as follows:

- **upon full payment of the guaranteed loan**

  Note: A zero balance within the period authorized for advances on a line of credit will not terminate the guarantee.

- **upon payment of a final loss claim**

- **upon written notice from the lender to the Agency that a guarantee is no longer desired provided the lender holds all of the guaranteed portion of the loan. The Loan Guarantee will be returned to the Agency office for cancellation within 30 days of the date of the notice by the lender.**

251-261 (Reserved)

Part 11 General Servicing Responsibilities

Section 1 General Servicing Requirements

262 Relationships and Responsibilities (7 CFR 762.140(a))

A Lender Role

Lenders are responsible for servicing the entire loan in a reasonable and prudent manner, protecting and accounting for collateral, and remaining the mortgagee or secured party of record.

The lender cannot enforce the guarantee to the extent that a loss results from a violation of usury laws or negligent servicing.

The lender is responsible for:

- servicing their guaranteed loans as they service any other loan in their portfolio
- complying with all FSA program requirements.

FSA servicing regulations are designed to accommodate standard agricultural lending practices, so lenders can be assured they meet program regulations if they:

- service guaranteed loans in a prudent, traditional manner
- comply with specific program eligibility guidelines and loan limits.

263 Borrower Supervision (7 CFR 762.140(b))

A Overview

Lenders must supervise guaranteed loan borrowers in a manner similar to their supervision of regular loan customers. Lenders are expected to apply standard, agricultural loan servicing principles to their guaranteed customers.

Examples of standard borrower supervision include the following:

- maintaining regular contact with the farmer
- periodically discussing the farmer's goals and monitoring progress in meeting these goals
- accounting for loan proceeds by monitoring expenditures and discussing how these will facilitate the achievement of the operator's expressed goals
- monitoring collateral and tracking the sale of security.

B Lender Supervision of Borrowers

The lender's responsibilities regarding borrower supervision include, but are not limited to the following:

- **ensuring loan funds are not used for unauthorized purposes**
- **ensuring borrower compliance with the covenants and provisions contained in the promissory note, loan agreement, mortgage security instruments, any other agreements, and this part**

  Note: Any violations which indicate non-compliance on the part of the borrower, must be reported, in writing, to both the Agency and the borrower.

- **ensuring the borrower is in compliance with all laws and regulations applicable to the loan, the collateral, and the operations of the farm**

Continued on the next page

263 Borrower Supervision (7 CFR 762.140(b)) (Continued)

B Lender Supervision of Borrowers (Continued)

- **receiving all payments of principal and interest on the loan as they fall due and promptly disbursing to any holder its pro-rata share according to the amount of interest the holder has in the loan, less only the lender's servicing fee**

- **performing an annual analysis of the borrower's financial condition to determine the borrower's progress.**

The loan application and other loan specific documents, including FSA-1980-15, Conditional Commitment, will detail the purposes and conditions for the loan. Lenders must inform FSA of any changes in fund use. SEL's must first receive FSA concurrence before allowing a change in loan fund use. If a borrower uses loan funds improperly, the lender must take steps to correct the violation. If improper use of loan funds results in a loss claim, lenders must make every effort to collect the loan's remaining outstanding debt and minimize loss to FSA.

Failure by the lender to report a borrower violation to FSA in a timely manner could result in the reduction or denial of a loss claim in case of default.

The lender shall obtain a perfected security interest in the loan collateral. Lenders must obtain secure liens on all collateral as outlined in FSA-1980-15. A loss claim may be reduced if a lender failed to perfect the loan security.

264 Servicing Collateral (7 CFR 762.142(a))

A Lender Servicing of Collateral

The lender's responsibilities regarding servicing collateral include, but are not limited to, the following:

- **obtain income and insurance assignments when required**
- **ensure the borrower has or obtains marketable title to the collateral**
- **inspect the collateral as often as deemed necessary to properly service the loan**
- **ensure the borrower does not convert loan security**
- **ensure proceeds from the sale or other disposition of collateral are accounted for and applied in accordance with the lien priorities on which the guarantee is based or used for the purchase of replacement collateral**
- **ensure the loan and the collateral are protected in the event of foreclosure, bankruptcy** (Part 13)**, receivership, insolvency, condemnation, or other litigation**
- **ensure taxes, assessments, or ground rents against or affecting the collateral are paid**
- **ensure adequate insurance is maintained**
- **ensure that insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or used to rebuild or acquire needed replacement collateral.**

The lender should refer to the specific loan documents, such as FSA-1980-15, for additional servicing requirements on a loan-by-loan basis.

B FSA Monitoring of Collateral Servicing

FSA shall notify a lender that does not have adequate procedures in place to ensure that the collateral is being serviced to FSA standards. Failure on the part of the lender to take action to correct the deficiency may result in denial of future loan applications or revocation of status until the deficiency is resolved. Failure by FSA to discover inadequate procedures during its monitoring review does not preclude FSA from taking actions necessary as a result of this deficiency at a later date.

265 Annual Analysis of Borrower's Financial Condition (7 CFR 762.140(b)(5))

A
Overview

The lender must perform an annual financial analysis of the borrower within 90 calendar days of the end of the borrower's operating cycle. SEL's and CLP lenders must submit documents to FSA in support of this analysis. PLP lenders must perform a financial analysis and report on a borrower's financial progress according to the terms of their FSA-1980-38. This paragraph describes the specific requirements for SEL's and CLP lenders.

PLP lenders will perform an annual analysis in accordance with the requirements established in the Lender's Agreement.

B
Financial Analysis of Borrower by SEL

The annual analysis will include:

- **for loans secured by real estate only, the analysis for standard eligible lenders must include a balance sheet**
- **for loans secured by chattels, all lenders will review the borrower's progress regarding business goals, trends, and changes in financial performance, and compare actual to planned income and expenses for the past year**
- **an account of the whereabouts or disposition of all collateral**
- **a discussion of any observations about the farm business with the borrower.**

Continued on the next page

265 Annual Analysis of Borrower's Financial Condition (7 CFR 762.140(b)(5)) (Continued)

C
Documents Submitted to FSA by SEL in Support of Annual Analysis

[7 CFR 762.141(d)] SEL shall provide the following to FSA:

- **borrower's Balance Sheet and Income and Expense Statement for the previous year**

- **for lines of credit, the cash flow for the borrower's operation that projects a feasible plan or better for the upcoming operating cycle**

  Note: The standard eligible lender must receive approval from the Agency before advancing future years' funds.

- **an annual farm visit report or collateral inspection.**

These documents must be submitted to FSA within 30 calendar days of the completion of the annual financial analysis.

D
Annual Analysis of Borrower by CLP Lender

For loans secured by real estate only, **CLP lenders will determine the need for the annual analysis based on the financial strength of the borrower and document the file accordingly.**

For loans secured by chattels, all lenders will review the borrower's progress regarding business goals, trends and changes in financial performance, and compare actual to planned income and expenses for the past year.

CLP lenders shall maintain **an account of the whereabouts or disposition of all collateral.**

CLP lenders shall document **a discussion of any observations about the farm business with the borrower.**

If the lender determines that an analysis should be performed, the analysis may be based on a comparison of current and past balance sheets. If a balance sheet analysis is not performed by the lender, information that confirms the borrower is strong financially and reasons why the lender is confident of the borrower's progress must be provided by the lender. Examples of information that would indicate the financial strength of the borrower would include deposit or investment accounts with the lender.

Continued on the next page

265 Annual Analysis of Borrower's Financial Condition (7 CFR 762.140(b)(5)) (Continued)

E Documents Submitted to FSA by CLP in Support of Annual Analysis

[7 CFR 762.141(c)] CLP lenders shall submit the following to FSA in support of their annual analysis:

- **a written summary of the lender's annual analysis of the borrower's operation**

  Note: This summary should describe the borrower's progress and prospects for the upcoming operating cycle. This annual analysis may be waived or postponed if the borrower is financially strong. The summary will include a description of the reasons an analysis was not necessary.

- **for lines of credit, an annual certification stating that a cash flow projecting at least a feasible plan has been developed, that the borrower is in compliance with the provisions of the line of credit agreement, and that the previous year income and loan funds and security proceeds have been accounted for.**

These documents must be submitted to FSA within 30 calendar days of the completion of the annual financial analysis.

266 Lender Reporting Requirements (7 CFR 762.141)

A Overview

This section covers the general reporting requirements for all lenders. These reporting requirements are not tied to any specific servicing action. Many servicing actions require additional reports and updates from lenders, which this paragraph does not cover. See Exhibit 15 for a checklist of all lender reporting requirements.

B General Reporting Requirements

Lenders are responsible for providing the local Agency credit officer with all of the following information on the loan and the borrower.

- **When the guaranteed loan becomes 30 days past due, and following the lender's meeting or attempts to meet with the borrower, all lenders will submit the appropriate Agency form showing guaranteed loan borrower default status. The form will be resubmitted every 60 days until the default is cured either through restructuring or liquidation.**

- **All lenders will submit the appropriate guaranteed loan status reports as of March 31 and September 30 of each year.**

- **PLP lenders will submit additional reports as required in their Lender's Agreement.**

- **A lender receiving a final loss payment must complete and return an annual report on its collection activities for each unsatisfied account for 3 years following payment of the final loss claim.**

Lenders shall submit FSA-1980-44, Guaranteed Farm Loan Default Status Report, to comply with the requirement to report borrower defaults. This report is used first to notify FSA that a loan is in default, second, as a progress report on the lender's attempt to make the loan current again, and third, once a loan is brought current, as a means to notify FSA of the new loan terms and conditions. See Part 12 for more details on this reporting requirement.

Continued on the next page

266 Lender Reporting Requirements (7 CFR 762.141) (Continued)

B General Reporting Requirements (Continued)

Lenders should submit FSA-1980-41, Guaranteed Farm Loan Status Report, to comply with the requirement to submit a semi-annual loan status report. This report provides an update on the borrower's progress on loan payback and the loan's terms and conditions.

Lenders should submit FSA-1980-26 to satisfy the requirement for an annual report on collection activities. See Part 14 for more details on this reporting requirement.

If any deficiencies in loan servicing are detected by FSA, FSA will work with the lender to correct any problems. If the lender fails to correct any loan servicing deficiency, and the deficiency results in a loss, the loss claim may be reduced or denied.

267-277 (Reserved)

Section 2 General Servicing Actions

278 Subordination of Guaranteed Loan Security (7 CFR 762.142)

A
Overview

Subordination of guaranteed loan security. **The lender may not subordinate its interest in property which secures a guaranteed loan except** either of the following**:**

- **the lender may subordinate its security interest in crops, feeder livestock, livestock offspring, or livestock products when no funds have been advanced from the guaranteed loan for their production, so a lender can make a loan for annual production expenses**

- **the Agency's National Office may provide an exception to the subordination prohibition if such action is in the Agency's best interest.** FSA refusal to grant an exception to published regulations is not appealable. All requests for exceptions must be submitted to the National Office by the FSA State Office with a recommendation for approval to be considered for approval.

However, in no case can the loan made under the subordination include tax exempt financing.

B
Lender Request for Subordination of Guaranteed Loan Security

FSA may approve a lender's request to subordinate crops, feeder livestock, livestock offspring, milk, produce, and other normal income security that were not produced through advances made under the guaranteed loan, to allow a borrower to obtain unguaranteed annual operating credit. Multi-year assignments of FSA program payments will not be subordinated. However, in those cases where normal income security is being subordinated so another lender can make a loan for annual production expenses, any amount that exceeds the guaranteed loan payment may be released.

279 Subordination of Direct Loan Security (7 CFR 762.142(c))

A
Direct Loan Subordination When Guaranteed Loan Is Being Made

The Agency may subordinate its security interest on a direct loan when a guaranteed loan is being made if, as appropriate, the requirements of the regulations § 1962.30 of FmHA Instruction 1962-A of this chapter and § 1965.12 of FmHA Instruction 1965-A **governing Agency direct loan subordinations are met and only in the following circumstances:**

- **to permit a guaranteed lender to advance funds and perfect a security interest in crops, feeder livestock, livestock offspring, or livestock products**, such as milk, eggs, wool, etc.
- **when the lender requesting the guarantee needs the subordination of the Agency's lien position to maintain its lien position when servicing or restructuring**
- **when the lender requesting the guarantee is refinancing the debt of another lender and the Agency's position on real estate security will not be adversely affected**
- **to permit a Line of Credit to be advanced for annual operating expenses**, subject to the conditions of subparagraph B.

B
Direct Loan Subordination to Secure LOC

The Agency may subordinate its basic security in a direct loan to permit guaranteed line of credit only when both of the following additional conditions are met.

- **The total unpaid balance of the direct loans is less than or equal to 75 percent of the value of all of the security for the direct loans, excluding the value of growing crops or planned production, at the time of the subordination. The direct loan security value will be determined by an appraisal. The lender requesting the subordination and guarantee is responsible for providing the appraisal and may charge the applicant a reasonable appraisal fee.**
- **The applicant cannot obtain sufficient credit through a conventional guaranteed loan without a subordination.** The applicant must request LOC through at least 1 participating lender and document that credit is not available without a subordination.

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280 Partial Releases (7 CFR 762.142(b))

A Overview

A partial release is the release of a portion of security used as collateral for a loan.

B Lender Request for Partial Release

A lender may release guaranteed loan security without FSA concurrence as follows:

- **when the security item is being sold for market value and the proceeds will be applied to the loan in accordance with lien priorities**

  Note: In the case of term loans, proceeds will be applied as extra payments and not as a regular installment on the loan.

- **the security item will be used as a trade-in or source of down payment funds for a like item that will be taken as security**

  Note: FSA input may be requested when there is a question of whether a reasonable value is being obtained for the security.

- **the security item has no present or prospective value.**

  Note: Older security items that are now junk or obsolete may be left off of the security agreement when it is updated. Regardless, proceeds from the sale of these items as scrap or salvage should be applied to the loan as an extra payment.

A partial release of security may be approved in writing by the Agency upon the lender's request when:

- **proceeds will be used to make improvements to real estate that increase the value of the security by an amount equal to or greater than the value of the security being released**

  Example: A borrower may sell a parcel of real estate to provide funds for construction of a dwelling.

Continued on the next page

280 Partial Releases (7 CFR 762.142(b)) (Continued)

B
Lender Request for Partial Release (Continued)

- **security will be released outright, with no consideration, but the total unpaid balance of the guaranteed loan is less than or equal to 75 percent of the value of the security for the loan, excluding the value of growing crops or planned production, after the release, based on a current appraisal of the security**

- **significant income generating property will not be released unless it is being replaced, and business assets will not be released for use as a gift or any similar purpose**

  Note: The release must serve a purpose other than to simply allow a borrower to obtain clear title to security items. Cropland, significant machinery, and business assets will not be released, unless it is being replaced, proceeds are being used for authorized loan purposes, or the borrower's cash flow or security position is being improved.

- **Agency concurrence is provided in writing to a lender's written request.**

  Note: Standard eligible lenders and CLP lenders will submit the following to the Agency:

  - **a current balance sheet on the borrower**

  - **a current appraisal of the security**

    Note: Unless specifically requested by FSA, the lender will not be required to provide an appraisal of any real estate security being released. **Based on the level of risk and estimated equity involved, the Agency shall determine what security needs to be appraised. Any required security appraisals must meet the requirements of § 762.127.**

  - **a description of the purpose for the release**

  - **any other information requested by the Agency needed to evaluate the proposed servicing action.**

Continued on the next page

280 Partial Releases (7 CFR 762.142(b)) (Continued)

C
FSA Response to Request for Partial Release

The lender will provide the Agency copies of any agreements executed to carry out the servicing action. PLP lenders will request servicing approval in accordance with their agreement with the Agency at the time of PLP status certification.

Written consent of any prior or junior lien holder must be obtained and delivered to FSA if any proceeds are not applied according to lien priority.

281 Transfers and Assumptions (7 CFR 762.142(d))

A
Overview

A transfer and assumption is an action whereby a new, eligible guaranteed loan applicant assumes an existing guaranteed loan. The transfer and assumption process is very similar to the application and approval of a new loan.

B
Lender Request for a Transfer and Assumption

For standard eligible and CLP lenders, the servicing action must be approved by the Agency in writing. For standard eligible and CLP lenders, the transferee must apply for a loan in accordance with § 762.110 (Part 5)**, including a current appraisal, unless the lien position of the guaranteed loan will not change, and any other information requested by the Agency to evaluate the transfer and assumption.**

PLP lenders may process transfers and assumptions in accordance with their agreement with the Agency.

Any required security appraisals must meet the requirements of § 762.127 (paragraphs 181 through 183).

Lenders must also submit a request to release the transferor, guarantor, or any third party from liability according to paragraph 285.

Continued on the next page

281 Transfers and Assumptions (7 CFR 762.142(d)) (Continued)

C Conditions and Requirements for a Transfer and Assumption

The following limitations apply to transfers and assumptions.

- **The transferee must meet the eligibility requirements and loan limitations for the loan being transferred, all requirements relating to loan rates and terms, loan security, feasibility, and environmental and other laws applicable to a loan applicant under this subpart.**
- **The lender will use its own assumption agreements or conveyance instruments providing they are legally sufficient to obligate the transferee for the total outstanding debt.**
- **The lender must execute a modification of the guarantee provided by the Agency to designate the party that assumed the guaranteed debt, the amount of debt at the time of the assumption (including interest that is being capitalized), and the new loan terms, if applicable.**
- **The lender must give any holder notice of the transfer. If the rate and terms are changed, written concurrence from the holder is required.**

Additional limitations that apply to transfers and assumptions are:

- the market value of the security being acquired, plus any additional security the transferee proposes to give, must be adequate to secure the balance of the guaranteed loan plus any prior liens
- if a transferee has an outstanding direct or guaranteed loans, the total combined direct and guaranteed indebtedness may not exceed the market value of the security or the maximum loan limits described in subparagraph 244 A.

Continued on the next page

281 Transfers and Assumptions (7 CFR 762.142(d)) (Continued)

D
FSA Response to Request for Transfer and Assumption

The Agency will review, approve or reject the request in accordance with the time frames in § 762.130 of this part (Part 6)**.**

The Agency will agree to releasing the transferor or any guarantor from liability only if the requirements of § 762.146(c) (paragraph 285) **are met.**

FSA will treat a request for a transfer as an application for a new guaranteed loan; however, a new guarantee fee will not be collected for the amount assumed.

The lender will provide the Agency copies of any agreements executed to carry out the servicing action.

282 Additional Loans or Advances (7 CFR 762.146(a))

A
Additional Loans or Advances

SEL and CLP lenders must not make additional loans or advances without prior written approval of the Agency, except as provided in the borrower's Loan or Line of Credit Agreement.

The PLP lender may make additional loans or advances in accordance with the lender's agreement with the Agency.

283 Emergency Advances (7 CFR 762.146(a))

A
Issuance of an Emergency Advance Under LOC

In cases of a guaranteed line of credit, lenders may make an emergency advance when a line of credit has reached its ceiling. The emergency advance will be made as an advance under the line and not as a separate note. The lender's loan documents must contain sufficient language to provide that any emergency advance will constitute a debt of the borrower to the lender and be secured by the security instrument. The following conditions apply:

- **the loan funds to be advanced are for authorized operating loan purposes**
- **the financial benefit to the lender and the Government from the advance will exceed the amount of the advance**
- **the loss of crops or livestock is imminent unless the advance is made.**

B
Lender Request for an Emergency Advance

SEL's and CLP lenders must obtain written permission from FSA before an emergency advance on LOC can be made.

Emergency advances are authorized for ongoing operations where the need is an aberration and will not reoccur. They may be used even in the case of OL's with a 1-year term, or in the last year of LOC. Where liquidation is imminent, advances will be made as protective advances according to 7 CFR 762.149 and Part 14. **Protective advance requirements are found in § 762.149.**

To request an emergency advance, SEL's and CLP lenders must submit the following to FSA:

- a narrative that explaining that the loss of crops and/or livestock is imminent and can be prevented by an infusion of cash
- cash flow projections
- if necessary, a copy of the modified loan note that reflects the additional cash advanced.

PLP lenders may make emergency advances according to their FSA-1980-38.

284 Interest Rate Changes (7 CFR 762.146(d))

A Overview

The lender may change the interest rate on a performing (nondelinquent) loan only with the borrower's consent.

B Procedures Lender Must Follow to Change Interest Rate

If the loan has been sold on the secondary market, the lender must repurchase the loan or obtain the holder's written consent.

To change a fixed rate of interest to a variable rate of interest or vice versa, the lender and the borrower must execute a legally effective amendment or allonge to the existing note.

If a new note is taken, it will be attached to and refer to the original note.

The lender will inform the Agency of the rate change.

The lender shall inform FSA of the rate change by completing RD-1980-47 and forwarding it to the County Office.

Lenders do not need to seek FSA concurrence to change an interest rate.

285 Release of Liability Upon Withdrawal (7 CFR 762.146(b))

A General Requirements

An individual who is obligated on a guaranteed loan may be released from liability by a lender with the written consent of the Agency provided the following conditions have been met.

- **The individual to be released has withdrawn from the farming or ranching operation.** The lender must submit a narrative outlining who is to be released and why.
- **A divorce decree and final property settlement does not hold the withdrawing party responsible for the loan payments.** A copy of the divorce decree must be submitted with the lender's request. The lender must document that release of divorced borrowers is a common practice carried out in their nonguaranteed loan portfolio.

Continued on the next page

285 Release of Liability Upon Withdrawal (7 CFR 762.146(b)) (Continued)

A General Requirements (Continued)

- **The withdrawing party's interest in the security is conveyed to the individual or entity with whom the loan will be continued.**

- **The ratio of the amount of debt to the value of the remaining security is less than or equal to .75, or the withdrawing party has no income or assets from which collection can be made.**

- **Withdrawal of the individual does not result in legal dissolution of the entity to which the loans are made. Individually liable members of a general or limited partnership may not be released from liability.** Partners, parents, cosigners, stockholders, and entity members may often be released from liability. However, when the guaranteed loan is made to individuals farming as a partnership, and each partner is fully liable, release of 1 partner would terminate the partnership and the existence of the entity to which the loans were made. The lender must document that release of withdrawing members is common in their unguaranteed portfolio and all other conditions in this paragraph are met.

- **The remaining liable party projects a feasible plan (see § 762.102(b)).** The lender must submit a cash flow projection for the remaining liable party with the request for release. A release will not be approved when a loss is probable.

B Lender Request for Release of Borrower From Liability Upon Withdrawal

PLP lenders shall submit documentation to FSA in support of a release from liability, as specified in FSA-1980-38. Upon review of the request, the local office must forward the request and a recommendation to the State Office for action.

286 Consolidation of Debt (7 CFR 762.146(e))

A Overview

Only OL may be consolidated.

Existing lines of credit may only be consolidated with a new line of credit if the final maturity date and conditions for advances of the new line of credit are made the same as the existing line of credit. OL loan note guaranteed loans may only be consolidated with other OL loan note guarantees.

The borrower must project a feasible plan after the consolidation. See § 762.102(b) for definition of feasible plan.

Guaranteed OL may not be consolidated with a line of credit, even if the line of credit has been rescheduled.

The combining of outstanding principal and interest balances of 2 or more OL's or LOC's constitutes a consolidation of debt.

The following FSA loans cannot be consolidated:

- FO's
- **OL's or lines of credit secured by real estate**
- **OL's or lines of credit with outstanding Interest Rate Buydown Agreement, IA Agreement, or SAA**
- non-FSA loans.

The following conditions also apply to consolidation:

- **guaranteed loans made before October 1, 1991, cannot be consolidated with those loans made on or after October 1, 1991**
- when 2 or more OL's or LOC's are consolidated the combined principal and interest must be kept separate; capitalization of interest is not allowed when loans are only being consolidated.

Continued on the next page

286 Consolidation of Debt (7 CFR 762.146(e)) (Continued)

B
Request for Consolidation

SEL's must submit a feasible plan to FSA for concurrence before consolidating loans. CLP and PLP lenders may consolidate loans as long as the requirements of this paragraph are met.

C
Lender Actions to Consolidate Loans

A new note or line of credit agreement will be taken. The new note or line of credit agreement must describe the note or line of credit agreement being consolidated and must state that the indebtedness evidenced by the note or line of credit agreement is not satisfied. The original note or line of credit agreement must be retained.

The interest rate for a consolidated OL loan is the negotiated rate agreed upon by the lender and the borrower at the time of the action, subject to the loan limitations for each type of loan.

A Modification of Guarantee will be executed. The modification will indicate the consolidated loan amount, new terms, and percentage of guarantee, and will be attached to the originals of the guarantees being consolidated. If loans with a different guarantee percentage are consolidated, the new guarantee will be at the lowest percentage of guarantee being consolidated.

Any holders must consent to the consolidation, or the guaranteed portion must be repurchased by the lender.

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287 Substitution of Lender (7 CFR 762.105)

A Overview

When a borrower wishes to move their guaranteed loan from 1 lender to another, or a lender wishes to sell a guaranteed loan to another lender, with or without the borrower's consent, FSA must process a substitution of lender.

B Lender Requirements

A new eligible lender may be substituted for the original lender, if the original lender concurs, under the following conditions.

- **The Agency approves of the substitution in writing. The new lender will:**
  - **agree in writing to assume all servicing and other responsibilities of the original lender and to acquire the unguaranteed portion of the loan**
  - **execute a lender's agreement if one is not in effect**
  - submit a request to FSA to be substituted
  - **agree to notify any holder written notice of the substitution.** If the rate and term are changed, written concurrence or repurchase is required.
- **The original lender will assign their promissory note, lien instruments, loan agreements, and other documents to the new lender. The guarantee documents will then be assigned to the new lender.** The original lender must:
  - **execute a modification of the guarantee provided by the Agency to identify the new lender, and contain the amount of debt at the time of the substitution, and the new loan terms if applicable**
  - **assign their promissory note, lien instruments, loan agreements, and other documents to the new lender**

Continued on the next page

287 Substitution of Lender (7 CFR 762.105) (Continued)

B Lender Requirements (Continued)

- **if the loan is subject to an existing IA Agreement, submit a request for subsidy for the partial year that they have owned the loan**

  Note: FSA-1980-64 can then be transferred to the new lender.

- if the original lender does not concur, the substitution cannot take place. If the borrower still wants to move their loan, the new lender may refinance the debt of the original lender.

C Lender Name or Ownership Changes

When a lender begins doing business under a new name or, undergoes an ownership change, the lender will notify the Agency.

The lender's CLP or PLP status is subject to reconsideration when ownership changes. If a status lender is merged with or purchased by a nonstatus lender, and the original lender's management, operating policies, Credit Management System, and personnel are changed as a result, the lender's CLP or PLP status will be revoked. If the newly merged or purchased lender will continue to operate the status lender substantially as it has been managed in the past, revocation may not be necessary. If a lender sells any guaranteed loans in their entirety, the State Office shall determine whether volume requirements of subparagraph 52 D are still being met.

The lender will execute a new Lender's Agreement.

The new lender must provide FSA with:

- its new tax ID number
- a list of all its branches where they will service guaranteed loans, their addresses, and responsible contacts.

Note: An interim request for subsidy payment from the original lender is not required when the entire lender has changed.

288 Servicing SAA's (7 CFR 762.147)

A Overview

When receiving a debt writedown, a borrower is required to execute FSA-1980-89, Shared Appreciation Agreement for Guaranteed Loans, that entitles the lender to future payments if the real estate used to secure the written down loan appreciates in value. FSA-1980-89 gives both the lender and FSA the possibility of recapturing money that was written off as a result of a debt writedown.

Before executing FSA-1980-89, the lender must obtain an appraisal of the real estate that is used to secure the written down loan. The appraisal figure will be recorded on FSA-1980-89. The appraisal must meet all the requirements listed in paragraph 2 and be paid for by the lender or borrower. The appraisal must be dated within 1 year of FSA-1980-89 execution to be valid.

All servicing requirements apply to all existing SAA's that were entered into before SAA becoming FSA-1980-89. For purposes of this handbook, wherever FSA-1980-89 is referred to, it will also pertain to existing SAA's.

All requirements in this paragraph apply to all lender types, unless otherwise noted.

B Lender Responsibilities When Servicing FSA-1980-89

The lender is responsible for:

- **monitoring the borrower's compliance with the Shared Appreciation Agreement**
- **notifying the borrower of the amount of recapture due**
- **beginning October 1, 1999, a notice of the agreement's provisions not later than 12 months before the end of the agreement**
- **reimbursing the Agency for its pro-rata share of recapture due.**

Continued on the next page

C
Events That Trigger Recapture

Recapture of any appreciation of real estate security will take place at the end of the term of the Agreement, or sooner, if the following occurs:

- **on the conveyance of the real estate security (or a portion thereof) by the borrower**

  Note: If only a portion of the real estate is conveyed, recapture will only be triggered against the portion conveyed. Partial releases will be handled in accordance with § 762.141(b) (paragraph 280)**;** and **transfer of title to the spouse of the borrower on the death of such borrower, will not be treated as a conveyance under the agreement.**

- **on the repayment of the loans**
- **if the borrower ceases farming operations.**

Recapture may also occur in either of the following cases:

- the note FSA-1980-89 is attached to is accelerated
- the borrower dies and there is no spouse to whom the property will be conveyed.

After FSA-1980-89 has been executed, the lender must monitor the borrower's compliance with FSA-1980-89. This includes determining when an event that activates FSA-1980-89 occurs.

When the borrower performs an action that triggers the collection under FSA-1980-89, the lender will obtain an appraisal of the collateral, determine the recapture due, if any, and notify the borrower of the amount due in writing. **Security values will be determined by appraisals obtained by the lender and meeting the requirements listed in 7 CFR 762.127** (paragraphs 181 through 183). The lender will pay for the appraisal or recapture the appraisal expense from the borrower. If the sale of security triggers recapture and the price received for the security is higher than its appraised value, then the sale price will serve as the upper limit when calculating incremental increase in the appreciation of security.

Continued on the next page

288 Servicing SAA's (7 CFR 762.147) (Continued)

C
Events That Trigger Recapture (Continued)

After recapture, the lender will give FSA its pro-rata share of the proceeds or service the account according to subparagraph F.

Use the letter in subparagraph D to remind the borrower of the FSA-1980-89 commitment.

D
Example of Letter Reminding Loan Borrowers of Potential Writedown Recapture

The following is an example of a letter for reminding loan borrowers of potential writedown recapture.

Borrower's Address

Dear (Borrower):

On Month, Day, Year, Name of Lender, wrote down $_____ of a debt that you owed in connection with a guarantee that was provided by the Farm Service Agency (FSA). In consideration for receiving this writedown, you executed a 10-year Shared Appreciation Agreement (Agreement) in connection with the real estate that you pledged as collateral for this loan. We have attached a copy of the Agreement for your reference.

This letter is to remind you of the possibility that you may have to repay all or a portion of the amount of your loan that was written down. The Agreement that you signed requires you to repay all or a portion of the debt written down if the real estate that secured the loans increased in value <u>and</u> one of the following occurs:

- Ten (10) years have passed since you signed the Agreement;
- Title of the real estate security (or a portion thereof) was conveyed (with certain exceptions);
- The remainder of the loan has been repaid; or
- You have quit farming.

If you believe the value of your property has increased, you will need to consider this potential liability when you make future plans. The amount of repayment cannot exceed the amount written down.

If you would like any additional information on how this Agreement can affect you and what actions you need to take, please contact this office.

Sincerely,

Lender's Representative
Enclosure

Continued on the next page

288 Servicing SAA's (7 CFR 762.147) (Continued)

E Calculating Recapture

The amount of recapture will be based on the difference between the value of the security at the time recapture is triggered and the value of the security at the time of write down as shown on the Shared Appreciation Agreement.

- **If recapture is triggered within 4 years of the date of the Shared Appreciation Agreement, the lender shall recapture 75 percent of any positive appreciation in the market value of the property securing the loan or line of credit agreement.**

- **If recapture is triggered after 4 years from the date of the Shared Appreciation Agreement, the lender shall recapture 50 percent of any positive appreciation in the market value of the property securing the loan or line of credit agreement.**

The amount of recapture will not exceed the amount of writedown shown on the Shared Appreciation Agreement.

Continued on the next page

288 Servicing SAA's (7 CFR 762.147) (Continued)

F Servicing Recapture Debt

If recapture is triggered under the Shared Appreciation Agreement and the borrower is unable to pay the recapture in a lump sum, the lender may do 1 of the following**.**

- **Reschedule the recapture debt with the consent of the Agency, provided the lender can document the borrower's ability to make amortized payments on the recapture debt plus pay all other obligations. In such case, the recapture debt will not be covered by the Guarantee.** The lender will send FSA its share of every payment when its received.
- **Pay the Agency its pro rata share of the recapture due. In such case, the recapture debt of the borrower will be covered by the Guarantee.**
- **Service the account in accordance with § 762.149.**

If recapture is triggered, and the borrower is unable or is able, but unwilling to pay the recapture in a lump sum, the lender will service the account in accordance with § 762.149.

Any shared appreciation recaptured by the lender will be shared on a pro-rata basis between the lender and the Agency.

All appraisal fees will be paid by the lender. The lender may pass the fee on to the borrower. Within 30 calendar days of receiving a notice of the appreciation due to the lender, the borrower has 30 calendar days to repay the debt in a lump sum.

Continued on the next page

288 Servicing SAA's (7 CFR 762.147) (Continued)

G
Basis for the Amount of Recapture

Because of 2 consecutive years of drought that destroyed crops, a farmer and lender devised a restructuring plan where $200,000 of remaining debt was written down to $100,000 and FSA-1980-89 was executed. FO had been guaranteed by FSA at 90 percent. An appraisal at the time of the writedown valued the farmer's security at $75,000.

One year later the farmer sells his farm for $85,000. The Basis for the Amount of Recapture is equal to:

Value of real estate security (appraisal or sale price, whichever one is higher) at the time of a recapture triggering event minus value of real estate security when FSA-1980-89 was executed.

Basis for the Amount of Recapture: $85,000 - $75,000 = $10,000.

Since Basis for the Amount of Recapture is positive, the borrower will be required to pay the lender a percentage of the recaptured monies. The percentage to be paid to the lender within the first 4 years of FSA-1980-89 execution is 75 percent (the percentage drops to 50 percent 4 years after FSA-1980-89 execution). Therefore, the farmer owes his lender the following:

$10,000 x 75% = $7,500 due the lender.

FSA is entitled to the portion of the shared appreciation equal to the rate of the guarantee on the loan. Therefore, in this case, FSA's pro-rata share is equal to:

$7,500 x 90% = $6,750 due FSA.

289-299 (Reserved)

Part 12 Servicing Distressed Accounts (Delinquent Loans)

Section 1 General Process for Restructuring Guaranteed Loans

300 Monetary Default - Overall Loan Servicing Process (7 CFR 762.143)

A
Default and Servicing Distressed Loans

A borrower is in default when they are 30 days past due on a payment or in violation of provisions of the loan documents.

When a default occurs, the lender is expected to work with the borrower so that the loan can be brought current and the borrower can continue the farming or ranching operation. Prompt follow-up on delinquent payments, early recognition of loan problems, and prudent use of restructuring tools are keys to resolving many delinquent loans. The lender has an assortment of restructuring tools that may be used to bring the loan current. These include:

- rescheduling
- deferral
- debt writedown.

The following table represents the time line for servicing distressed loans and the required lender actions for restructuring guaranteed loans.

Distressed Loan Servicing Time Line (Monetary Default)	
Payment Due Date	Payment Missed
30 Days After Due Date	Borrower in Default
Within 45 Days After Due Date	Meeting Between Borrower and Lender
60 Days After IA Determination	Earliest Date that Lender Can Initiate Foreclosure Action
Within 120 Days After Due Date	Loan Restructuring Plan Implemented or Decision to Liquidate Made

Continued on the next page

300 Monetary Default - Overall Loan Servicing Process (7 CFR 762.143) (Continued)

B
Loan Past Due

Default occurs on the loan immediately upon failure to make a scheduled installment on the day it is due. However, many lender's provide for a 30-calendar-day grace period before a notice of default is mailed or other actions are taken. To comply with this standard FSA has established 30 calendar days after payment due date as the maximum allowed before a loan must be declared in default. No direct action, other than monitoring of the situation, is required before this date. However, a lender does not have to wait until the loan is 30 calendar days past due before taking action. For example, perishable security, such as produce, or instances of maltreated livestock may dictate a quicker response to default than 30 calendar days.

If a borrower is current on a loan, but will be unable to make a payment, a restructuring proposal may be submitted in accordance with § 762.145 of this part and Section 2 **prior to the payment coming due.**

Failure to address default in a prudent and timely fashion may result in a reduction or rejection of a lender's request for a loss claim, should one result. A loss claim may be reduced by the amount caused by the lender's failure to secure property after a default, and will be reduced by the amount of interest that accrues while no contact is made with the borrower or no action is taken to cure the default, once it occurs.

Continued on the next page

C
Borrower in Default

PLP lenders will service defaulted loans according to their lender's agreement. In the event of borrower default, SEL and CLP lenders will report to the Agency in accordance with 762.141.

A guaranteed loan is in default if a loan payment is outstanding 30 calendar days after its due date. A borrower may also be in default if they have violated a loan agreement in another manner such as conversion of loan security, filing bankruptcy, failure to submit reports as required, defaulting on another loan with the same lender, or failure to maintain collateral as agreed. The lender will determine if a loan warrants default status because of a nonmonetary violation of the loan agreement. See paragraph 301 for information on the servicing process for loans in nonmonetary default.

D
Borrower and Lender Meeting

The lender will **arrange a meeting with the borrower within 15 days of default, 45 days after payment due date for monetary defaults, to identify the nature of the delinquency and develop a course of action that will eliminate the delinquency and correct the underlying problems. The lender or the borrower may request the attendance of an Agency credit officer. If requested, the Agency credit officer will assist in developing solutions to the borrower's financial problems. Non-monetary defaults will be handled in accordance with the lender's note, loan agreements or any other applicable loan documents.**

During this meeting, the lender should discuss the following items with the borrower.

- Borrower's Ability to Bring Account in Compliance. **The lender and borrower will prepare a current balance sheet and cash flow projection in preparation for the meeting. If the borrower refuses to cooperate, the lender will compile the best available information.** These statements and their implication in the borrower's ability to bring the loan current should be discussed at the lender-borrower meeting.

Continued on the next page

300 Monetary Default - Overall Loan Servicing Process (7 CFR 762.143) (Continued)

D

Borrower and Lender Meeting (Continued)

- Restructuring Options Available to Borrower. The variety of possible restructuring options includes rescheduling, deferral, or debt writedown or a combination thereof as described in paragraphs 326 through 328. After analyzing the current financial condition of the borrower, 1 or more of these options may be presented as possible solutions to resolve the borrower's financial problems.

  Note: If requested, FSA may offer advice and answer questions to assist in developing solutions to the borrower's financial problems, and may concur with limited proposals, such as short term forbearance, that result from the meeting. Official FSA concurrence cannot be provided until a formal proposal is submitted by the lender.

- Determination of Availability of IA. The lender must inform the borrower about the IA Program. If the lender and borrower feel that IA in conjunction with a loan rescheduling will correct the loan default, they may submit an IA request to FSA according to Part 8, Section 3. IA eligibility is determined by FSA according to Part 9. The borrower can waive IA Program eligibility consideration during the meeting. If program eligibility consideration is waived in writing, the loan can be accelerated immediately and a liquidation plan may be submitted to FSA.

The lender will summarize the meeting and proposed solutions on the Agency form for guaranteed loan borrower default status (FSA-1980-44) **completed after the meeting** and submit it to the local credit office immediately**. The lender will indicate the results on this form for the lender's consideration of the borrower for interest assistance in conjunction with a rescheduling under § 762.145 (b).** Copies of correspondence sent to the borrower regarding agreements reached may be attached to this report. The meeting summary attached to FSA-1980-44 should also include the dates of planned servicing actions. The lender must continue to submit FSA-1980-44 every 60 calendar days until the default is resolved or a final loss claim is submitted. The lender will include on each report the most recent contact with the borrower or action to collect the loan as well as the next planned action and date. If a default is resolved, the lender must submit FSA-1980-44 indicating that the loan is current and the new loan terms and conditions.

Continued on the next page

300 Monetary Default - Overall Loan Servicing Process (7 CFR 762.143) (Continued)

E
Borrower Refusal to Attend Meeting

If after 60 calendar days a delinquent borrower does not respond to the lender's request for a meeting or refuses to discuss resolution of the default, the lender should take actions to protect their security interests and proceed with liquidation of the loan according to subparagraph G.

F
Lender Repurchase of Guarantee

The lender will determine whether it will repurchase the guaranteed portion from the holder in accordance with § 762.144 if the guaranteed portion of the loan was sold on the secondary market. See Part 15.

The holder may ask the lender to repurchase the guarantee 60 calendar days after the missed payment date. The lender is encouraged to repurchase the guarantee when asked by the holder according to Part 15.

G
Earliest Date to Begin to Liquidate Security

The lender may not initiate foreclosure action on the loan until 60 days after eligibility of the borrower to participate in the Interest Assistance Programs has been determined by the Agency.

Sixty calendar days after the disposition of the issue of IA, the lender may accelerate the loan. When accelerating the loan, SEL's and CLP lenders must submit a liquidation plan to FSA. If at any point before the end of the 60-calendar-day period the borrower waives IA eligibility consideration in writing, the lender may prepare to liquidate the loan immediately. See Part 14.

No abeyance period applies to loan restructuring. The lender and borrower may restructure a loan at any time following the meeting, regardless of the IA eligibility decision.

Continued on the next page

300 Monetary Default - Overall Loan Servicing Process (7 CFR 762.143) (Continued)

H Loan Restructuring Decision

The lender must decide whether to restructure or liquidate the account within 90 days of default, unless the lender can document circumstances that justify an extension by the Agency.

If loan restructuring cannot eliminate the default or the borrower will not eliminate the default within a reasonable period of time, the loan shall be liquidated. See Part 14.

If the borrower can present a feasible restructuring proposal, the lender should prepare the plan and submit it to FSA as required by their FSA-1980-38. **Standard eligible lenders must obtain prior written approval of the Agency for all restructuring actions.** See paragraph 313.

FSA expects CLP and PLP lenders to have explored servicing options and implemented a feasible restructuring plan within 90 calendar days of default. If a lender plans to perform a debt writedown, prior approval from FSA is necessary. See paragraph 328. If restructuring is infeasible, FSA expects the lender to accelerate the loan and prepare for liquidation by this date. See Part 14.

301 Nonmonetary Default - Overall Loan Servicing Process

A Servicing Requirements

If a borrower defaults on his loan because of a nonmonetary default, the lender must service the loan in a manner consistent with monetary default regulations. FSA expects the lender to have a meeting with the borrower to explain the cause of the default soon after default is declared.

At the meeting between the lender and borrower, the lender should discuss corrective actions desired and options for mitigation of the default. For example, if the borrower was supposed to maintain a herd of 130 breeding animals, but was declared in default because it has decreased to 120, the lender should discuss the availability of replacement collateral, time frames, and conditions. The borrower and lender should work to develop a feasible restructuring plan.

Once default is declared the lender is expected to take all necessary actions to protect and secure the loan's collateral.

B FSA Concurrence

If the lender and borrower cannot develop a feasible restructuring plan to bring the loan current again, the loan shall be liquidated. FSA will respond to a PLP and CLP's request to liquidate a loan in the case of a nonmonetary default within 14 calendar days of receiving the lender's request for concurrence on loan liquidation. SEL lenders will be contacted by FSA within 30 calendar days of the receipt of a liquidation request. Once FSA concurs on a lender's request to liquidate a loan as a result of a nonmonetary default, FSA expects the lender to initiate a foreclosure action, accelerate the loan, and file a liquidation plan in a timely manner. See Part 14 for guidelines on liquidation.

302-311 (Reserved)

Section 2 Restructuring Requirements for Guaranteed Loans

312 Lender Requirements and Conditions for Loan Restructuring (7 CFR 762.145)

A General Requirements

For any restructuring action, the following conditions apply.

- **The borrower meets the eligibility criteria of § 762.120, except the provisions regarding prior debt forgiveness and delinquency on a Federal debt do not apply.**

- **A final loss claim may be reduced, adjusted, or rejected as a result of negligent servicing after the concurrence with a restructuring action under this section.**

- **Balloon payments are prohibited; however, the loan can be restructured with unequal installments, provided that, in addition to a feasible plan for the upcoming operating cycle, a feasible plan can be reasonably projected after the installments increase** without further restructuring**. Feasible plan is defined in § 762.102(b).**

- **The lender's security position will not be adversely affected because of the restructuring. New security instruments may be taken if needed, but a loan does not have to be fully secured in order to be restructured.**

- **Any holder agrees in writing to any changes in the original loan terms, including the approval of interest assistance. If the holder does not agree, the lender must repurchase the loan from the holder for any loan restructuring to occur.**

If the lender takes additional security as part of the loan restructuring, a list of the new security items and their estimated values should be forwarded to FSA along with all the other restructuring materials according to paragraph 313.

All lenders will submit copies of any restructured notes or lines of credit to the Agency.

313 Specific Lender Requirements for Loan Restructuring (7 CFR 762.145)

A SEL Request for Restructuring

Standard eligible lenders must obtain prior written approval of the Agency for all restructuring actions.

The borrower's ability to make the amended payment is documented by the following:

- **a feasible plan (see § 762.102(b))**

  Note: If interest assistance is required to achieve a feasible plan, the items required by § 762.150 (d) must be submitted with a restructuring request.

- **current financial statements from all liable parties**
- **verification of nonfarm income**
- **verification of all debts of $1,000 or more**
- **applicable credit reports**
- **financial history and production history (and production history for standard eligible lenders) for the past 3 years to support the cash flow projections.**

After SEL has restructured the loan, the lender must submit:

- FSA-1980-44 indicating that the loan is current
- copies of restructured notes or LOC's
- FSA-1980-84, if interest was capitalized.

Continued on the next page

313 Specific Lender Requirements for Loan Restructuring (7 CFR 762.145) (Continued)

B CLP Restructuring Requirements

CLP lenders must obtain prior written approval of the Agency only for debt write down under this section.

For restructuring other than write down, CLP lenders will provide FSA with a certification that each requirement of this section (part) **has been met, a narrative outlining the circumstances surrounding the need for restructuring, and copies of any applicable calculations.**

In addition, the CLP lender will provide:

- copies of any restructured notes
- FSA-1980-44 to show the loan is current
- FSA-1980-84, if applicable.

C PLP Restructuring Requirements

PLP lenders will restructure loans in accordance with their lender's agreement.

A PLP lender may request guidance on or concurrence with a restructuring proposal. FSA will review the request for compliance with the terms indicated in the credit management plan attached to FSA-1980-38.

All PLP lenders will submit copies of any restructured notes to FSA. With the copies of any restructured notes, PLP's must attach a cover memo explaining the restructuring and FSA-1980-44 to confirm that the loan is once again current.

314 FSA Response to Restructuring Requests

A
FSA Response to Requests for Restructuring

[7 CFR 762.145(a)] If the standard eligible lender's proposal for servicing is not agreed to by the Agency, the Agency approval official will notify the lender in writing within 14 days of the lender's request.

Any request for concurrence on a restructuring plan must be accompanied by all necessary supporting documents according to paragraphs 313 and 326 through 328.

B
FSA Review of PLP Restructuring Actions

An explanation of the restructuring must accompany a completed FSA-1980-44 confirming that the loan is current.

315-325 (Reserved)

326 Rescheduling of Debt (7 CFR 762.145)

A
Overview

Rescheduling involves changing the payment terms of a loan, such as a change in the interest rate or term in years of a note or LOC agreement. The new repayment schedule must be based on the borrower's ability to repay over the maximum loan term or life of the security. A loan does not have to be in default before being rescheduled.

B
General Requirements for Rescheduling

[7 CFR 762.145(c)] Payments will be rescheduled within the following terms:

- **FO and existing SW loans may be amortized over the remaining term of the note or rescheduled with an uneven payment schedule over a period not to exceed 40 years from the date of the original note**

- **OL notes must be rescheduled over a period not to exceed 15 years from the date of the rescheduling. An OL line of credit must be rescheduled over a period not to exceed 7 years from the date of the rescheduling or 10 years from the date of the original note, whichever is less. Advances cannot be made against a line of credit loan that has had any portion of the loan rescheduled.**

The interest rate for a rescheduled loan is the negotiated rate agreed upon by the lender and the borrower at the time of the action, subject to the loan limitations for each type of loan.

Continued on the next page

326 Rescheduling of Debt (7 CFR 762.145) (Continued)

C
Required Lender Actions

[7 CFR 762.145(c)] A new note is not necessary when rescheduling occurs. However, if a new note is not taken, the existing note or line of credit agreement must be modified by attaching an "allonge" or other legally effective amendment, evidencing the revised repayment schedule and any interest rate change. If a new note is taken, the new note must reference the old note and state that the indebtedness evidenced by the old note or line of credit agreement is not satisfied. The original note or line of credit agreement must be retained.

To request a rescheduling, SEL lenders must submit documentation according to the requirements listed in paragraph 313 and obtain FSA approval before implementation of the action. CLP and PLP lenders must submit documentation according to requirements listed in paragraph 313 **after** rescheduling a loan.

D
Capitalization of Interest

[7 CFR 762.145(b)] The lender may capitalize the outstanding interest when restructuring the loan as follows.

- **As a result of the capitalization of interest, a rescheduled promissory note may increase the amount of principal which the borrower is required to pay. However, in no case will such principal amount exceed the statutory loan limits contained in § 762.122.**

- **When accrued interest causes the loan amount to exceed the statutory loan limits, rescheduling may be approved without capitalization of the amount that exceeds the limit. Noncapitalized interest may be scheduled for repayment over the term of the rescheduled note.**

In a restructuring action, if capitalization of interest will cause the balance of the borrower's debts to exceed the limits described in subparagraph 244 A, the interest that would cause the loan to exceed the loan limit cannot be capitalized. Excess interest will be guaranteed and the lender may schedule the repayment over the term of the rescheduled note. If payments are received on the loan after the restructuring that exceed the regularly scheduled installment, excess payments may be applied to the noncapitalized interest first.

Continued on the next page

326 Rescheduling of Debt (7 CFR 762.145) (Continued)

D
Capitalization of Interest (Continued)

- **Only interest that has accrued at the rate indicated on the borrower's original promissory notes may be capitalized. Late payment fees or default interest penalties that have accrued due to the borrower's failure to make payments as agreed are not covered under the guarantee and may not be capitalized.**

- **Approved capitalized interest will be treated as part of the principal and interest that accrues thereon, in the event that a loss should occur.**

As part of restructuring request, SEL lenders must receive FSA concurrence before interest can be capitalized.

Following restructuring, the lender should submit FSA-1980-44 indicating that the loan is current.

The lender may keep a record of late fees and default charges and collect them from the borrower in the case of extra payments or payment in full.

E
FSA Review of Capitalization Request

The Agency will provide the lender with a Modification of Guarantee form to identify the new loan principal and the guaranteed portion if greater than the original loan amounts, and to waive the restriction on capitalization of interest, if applicable, to the existing guarantee documents. The modification form will be attached to the original Guarantee as an addendum.

When CLP or PLP has rescheduled or reamortized a loan with capitalized interest, or when FSA has concurred with a lender's restructuring plan that includes capitalized interest, the lender must execute FSA-1980-84, Modification of Loan Guarantee, to reflect the new guaranteed principal and any excess interest.

Continued on the next page

326 Rescheduling of Debt (7 CFR 762.145) (Continued)

F
Capitalization of Interest on Loans With IA

If the loan has IA and the capitalized interest exceeds the original IA loan amount and/or the original term of the IA agreement, the new IA terms must be obligated for the lender to receive their correct subsidy payment. FSA-1980-24 will be completed for the period from the previous FSA-1980-24 to the date of the restructuring.

G
Loan Consolidation

If a borrower has 2 or more guaranteed loans, the lender, under certain circumstances, may consolidate the guaranteed loans before rescheduling. The single, consolidated loan would be rescheduled according to this paragraph. See paragraph 286 for conditions regarding the consolidation of guaranteed loans.

H
IA

Rescheduling of a loan with IA must meet all the conditions described in this paragraph and Part 9.

327 Deferrals (7 CFR 762.145(d))

A
General Description

A deferral postpones the payment of principal and interest on FO, OL, or LOC to accommodate a temporary inability of the borrower to make scheduled payments. Loan principal can be deferred in whole or part. If the deferment period is 1 year or less, interest can be deferred in whole or in part. Interest may only be deferred in part if the deferral period extends over 1 year.

Continued on the next page

327 Deferrals (7 CFR 762.145(d)) (Continued)

B Conditions

The following conditions also apply to deferrals.

- **Payments may be deferred up to 5 years, but the loan may not be extended beyond the final due date of the note.**
- **The principal portion of the payment may be deferred either in whole or in part.**
- **Interest may be deferred only in part. Payment of a reasonable portion of accruing interest as indicated by the borrower's cash flow projections is required for multi-year deferrals.**
- **There must be a reasonable prospect that the borrower will be able to resume full payments at the end of the deferral period.**

To request a deferral, lenders must submit documentation according to the requirements listed in paragraph 313.

The amount of principal and interest deferred must be based on the borrower's current ability to pay and projections regarding ability to pay in the future. If the deferral period is to extend beyond 1 year, only a portion of the interest can be deferred.

The loan may be rescheduled after the deferral if payments as scheduled cannot be made.

A Overview

A debt writedown involves writing off a portion of the outstanding balance of a loan. A lender may write down a delinquent guaranteed loan only in an amount sufficient to enable the borrower to repay the reduced debt over the remaining term of the loan. All lenders must seek FSA concurrence before they can execute a debt writedown.

B General Requirements

The following conditions also apply to debt writedowns.

- **A lender may only writedown a delinquent guaranteed loan or line of credit in an amount sufficient to permit the borrower to develop a feasible plan of operation as defined in § 762.102(b).**
- **The lender will request other creditors to negotiate their debts before a writedown is considered.**
- **The borrower cannot develop a feasible plan after consideration is given to rescheduling, reamortization and deferral under this section.**
- **The present value of the loan to be written down, based on the interest rate of the rescheduled loan, will be equal to or exceed the net recovery value of the loan collateral.**
- **The loan will be restructured with regular payments at terms no shorter than 5 years for a line of credit and OL loan note and no shorter than 20 years for an FO, unless required to be shorter by § 762.145(b)(1)(i) and (ii).**
- **No further advances may be made on a line of credit that is written down.**
- **Loans may not be written down with interest assistance. If a borrower's loan presently on interest assistance requires a writedown, the writedown will be considered without interest assistance. If approved, the existing Interest Assistance Agreement will be canceled.**
- **The writedown is based on writing down the shorter-term loans first.**

Continued on the next page

328 Debt Writedown (7 CFR 762.145(e)) (Continued)

B General Requirements (Continued)

- **When a lender requests approval of a writedown for a borrower with multiple loans, the security for all of the loans will be cross-collateralized and continue to serve as security for the loan that is written down. If a borrower has multiple loans and one loan is written off entirely through debt writedown, the security for that loan will not be released and will remain as security for the other written down debt. Additional security instruments will be taken if required to cross-collateralize security or maintain lien priority.**

- **The writedown will be evidenced by an allonge or amendment to the existing note or line of credit reflecting the writedown.**

The holder or holders, if any, must agree to the writedown or the lender must repurchase the guaranteed portion.

C Borrower Execution of FSA-1980-89

The borrower executes an Agency shared appreciation agreement for loans which are written down and secured by real estate. See paragraph 288 for information on servicing FSA-1980-89's.

- **The lender will attach the original agreement to the restructured loan document.**

- **The lender will provide FSA a copy of the executed agreement.**

- **Security instruments must ensure future collection of any appreciation under the agreement.**

Continued on the next page

328 Debt Writedown (7 CFR 762.145(e)) (Continued)

D
Lender Actions to Support Write Down Debt Request

The lender will prepare and submit the following to the Agency:

- **a current appraisal of all property securing the loan in accordance with § 762.127** and paragraphs 181 through 183

- **a completed report of loss on the appropriate Agency form for the proposed writedown loss claim**

- **detailed writedown calculations**

  Note: Detailed writedown calculations will be recorded on FSA-1980-88, Farm Loan Programs Guaranteed Writedown Worksheet. Contact FSA for completion instructions and examples. If a borrower's cash flow projection indicates that within a definite, foreseeable time, additional repayment will be available for the guaranteed loan, the present value of the loan will be calculated based on an uneven payment stream.

- **detailed writedown calculation as follows:**

  - **calculate the present value** (Exhibit 10)

  - **determine the net recovery value** (Exhibit 10)

  - **if the net recovery value exceeds the present value, writedown is unavailable; liquidation becomes the next servicing consideration**

  - **if the present value equals or exceeds the net recovery value, the debt may be written down to the present value**

- **the lender will make any adjustments in the calculations, as requested by the Agency.**

Continued on the next page

328 Debt Writedown (7 CFR 762.145(e)) (Continued)

D Lender Actions to Support Write Down Debt Request (Continued)

The appraisal will be paid for by the lender, but the cost can be passed to the borrower.

FSA-1980-88 will be used to calculate lender loss. After the lender loss has been calculated on FSA-1980-88, the lender loss claim will be submitted on RD-449-30, Loan Note Guarantee Report of Loss. Lender loss will be the percentage of the guarantee multiplied by the difference between the outstanding principal and interest balance of the loan before the writedown and the outstanding balance of the loan after the writedown.

In addition to the materials noted in this paragraph, SEL's and CLP's must submit materials according to paragraph 313 to request a debt writedown.

329 FSA Review and Monitoring of Restructured Loans (7 CFR 762.145(b)) (Continued)

A FSA Monitoring of Loans That Have Been Restructured

A final loss claim may be reduced, adjusted, or rejected as a result of negligent servicing after the concurrence with a restructuring action under this section.

If the lender submits a loss claim on a loan that was restructured, and the loan was not restructured according to FSA-approved terms, the loss claim may be reduced or denied altogether. The loss claim may be reduced for failure to carry out the restructuring as proposed, a deficiency that occurred before the restructuring action, or an action that is taken after the loan is restructured.

330-339 (Reserved)

Part 13 Bankruptcy

340 Bankruptcy (7 CFR 762.148(a))

A Overview

The lender must protect the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings.

Lenders can apply to FSA to recover principal, interest, and certain expenses lost as a result of bankruptcy proceedings.

341 Lender's Responsibilities in Bankruptcy Proceedings (7 CFR 762.148(a))

A Lender Responsibilities in Bankruptcy Cases

Lenders must satisfy all requirements pertaining to a creditor in a bankruptcy proceeding, including the procedures under Chapter 7 (Liquidation), Chapter 11 (Reorganization), Chapter 12 (Adjustment of Debts of a Family Farmer with Regular Annual Income), or Chapter 13 (Adjustment of Debts of an Individual with Regular Income) of the Bankruptcy Code (Title 11 of the United States Code), whichever is applicable. Lenders must ensure that a valid proof of claim is submitted; that collateral securing the guaranteed loan is protected; and that all rights of participation are exercised or protected. **The lender's responsibilities include, but are not limited to,** the following requirements.

- **Filing a proof of claim where required and all the necessary papers and pleadings.** If the loan includes FSA-1980-89, it must be included in the lender's proof of claim. See paragraph 288.

- **Attending, and where necessary, participating in meetings of the creditors and court proceedings.**

Continued on the next page

341 Lender's Responsibilities in Bankruptcy Proceedings (7 CFR 762.148(a)) (Continued)

A Lender Responsibilities in Bankruptcy Cases (Continued)

- **Protecting the collateral securing the guaranteed loan and resisting any adverse changes that may be made to the collateral.** If the debtor remains in possession, the lender must monitor for any adverse changes that may be made to the collateral and resist those changes by legal action, repossession of the collateral, or other suitable means. If the trustee in bankruptcy has assumed jurisdiction over the collateral, the lender must cooperate with the trustee in the administration of the estate. Such cooperation, however, should not preclude the lender from opposing actions of the trustee that do not advance the interests of the lender. The lender should attend and observe any public sales of collateral held by the trustee, and if appropriate submit a minimum bid.

- **Seeking a dismissal of the bankruptcy proceeding when the operation as proposed by the borrower to the bankruptcy court is not feasible.**

- **Monitor confirmed plans under chapters 11, 12, and 13 of the bankruptcy code to determine borrower compliance. If the borrower fails to comply, the lender will seek a dismissal of the reorganization plan.**

- **When permitted by the bankruptcy code, requesting a modification of any plan of reorganization if it appears additional recoveries are likely.**

- **Keeping the Agency regularly informed in writing of all aspects of the proceedings.**

  - The lender will submit a regular default status report when the borrower defaults and should inform FSA of all significant steps in the bankruptcy proceeding, including the dates and pertinent details concerning:

    - confirmation of the plan
    - effective date of the plan
    - date the plan is completed
    - failure of the debtor to comply with the plan
    - discharge of the debtor.

Continued on the next page

341 Lender's Responsibilities in Bankruptcy Proceedings (7 CFR 762.148(a)) (Continued)

A Lender Responsibilities in Bankruptcy Cases (Continued)

- **The lender shall submit a default status report when the borrower defaults and every 60 days until the default is resolved or a final loss claim is paid.** The initial FSA-1980-44 is sent to the local credit office immediately following the lender-borrower default meeting. See paragraph 313.

- **The default status report will be used to inform the Agency of the bankruptcy filing, the reorganization plan confirmation date and effective date, when the reorganization plan is complete, and when the borrower is not in compliance with the reorganization plan.**

342 Lender's Claims for Expenses and Estimated Losses in Reorganization Bankruptcy Proceedings (7 CFR 762.148)

A Claims for Expenses in Reorganizations

Lenders will be compensated for expenses and losses incurred as a result of a Chapter 11, 12, or 13 bankruptcy proceeding as follows:

- **Lender's in-house expenses, which are those expenses which would normally be incurred for administration of the loan, including in-house lawyers, are not covered by the guarantee.**

- Expenses paid by lenders to third parties will be compensated as follows.

  - **Expenses, such as legal fees, and the cost of appraisals incurred by the lender as a direct result of the borrower's Chapter 11, 12, or 13 reorganization, are covered under the guarantee, provided they are reasonable, customary, and provide a demonstrated economic benefit to the lender and the Agency** and will be paid upon satisfactory claim by the lender. Such expenses must be incurred following the filing of a voluntary petition by the borrower, and must be incurred before discharge of the debtor. Such third party costs must be reasonable and appropriate, and must be documented in the lender's files. Reasonable and appropriate generally will be determined by the commercial standards and practices in that location, and should be typical for the unguaranteed loans of the lender. Appraisal costs significantly higher than typical appraisal costs for a similar appraisal in the same part of the country by an appraiser of similar experience, for example, might be unreasonable.

Continued on the next page

342 Lender's Claims for Expenses and Estimated Losses in Reorganization Bankruptcy Proceedings (7 CFR 762.148) (Continued)

A
Claims for Expenses in Reorganizations (Continued)

- Claims for expenses in reorganizations may be combined with claims for estimated losses of principal and interest or protective advances, but will not be paid the lender before plan confirmation.

B
Claims for Estimated Losses of Principal and Interest in Reorganizations

Lenders may submit a claim for losses of principal and interest sustained as a result of a reorganization plan in a bankruptcy reorganization proceeding.

- Claims will be submitted using RD-449-30 to FSA.

- **At confirmation, the lender may submit an estimated loss claim upon confirmation of the reorganization plan in accordance with the following:** The initial estimated loss claim must include a copy of the confirmed bankruptcy plan and a memorandum clearly indicating the plan confirmation date, the date the plan is to go into effect, and any other relevant information concerning the loan and the loss claim, or such supporting documentation must be supplied immediately following confirmation of the plan. The loss will be paid as of the plan effective date with no additional interest accrual after that date.

- **The estimated loss claim will cover the guaranteed percentage of the principal and accrued interest written off, plus any allowable costs incurred as of the effective date of the plan.**

- **The lender will submit supporting documentation for the loss claim.**

- **The estimated loss payment may be revised as consistent with a court-approved reorganization plan.**

Continued on the next page

342 Lender's Claims for Expenses and Estimated Losses in Reorganization Bankruptcy Proceedings (7 CFR 762.148) (Continued)

C Claims for Estimated Interest-Only Losses in Reorganizations

Lenders may submit an estimated loss claim for interest only after confirmation of the reorganization plan in accordance with the following.

- Claims should be submitted using RD-449-30 to FSA.
- The interest-only estimated loss claim can be approved only after confirmation date of the reorganization plan.
- The initial interest-only estimated loss claim may include a claim for interest accrued to the effective date of the reorganization plan (the date when the plan becomes effective). This date may be later than the date the plan is approved by the court, the confirmation date. This loss will be paid as of the plan effective date with no additional interest accrual after that date.
- If the lender has a variable rate that remains at or below the court-ordered rate during the claim period, no loss claim may be submitted.
- Subsequent claims for interest-only estimated losses covering 1-year periods following the effective date of the reorganization plan may be submitted annually, and will be processed on the anniversary date of the effective date of the reorganization plan or immediately thereafter.
- **The loss claims may cover interest losses sustained as a result of court-ordered, permanent interest rate reduction.**
- **The loss claims will be processed annually on the anniversary date of the effective date of the reorganization plan.**
- **If the borrower performs under the terms of the reorganization plan, annual interest reduction loss claims will be submitted on or near the same date, beyond the period of the reorganization plan.**

Continued on the next page

342 Lender's Claims for Expenses and Estimated Losses in Reorganization Bankruptcy Proceedings (7 CFR 762.148) (Continued)

D
Claims for Reimbursement of Protective Advances in Reorganizations

Protective advances made and approved in accordance with § 762.149 may be included in an estimated loss claim associated with a reorganization, if:

- **they were incurred in connection with the initiation of liquidation action prior to bankruptcy filing**
- **the advance is required to provide repairs, insurance, etc. to protect the collateral as a result of delays in the case or failure of the borrower to maintain the security.**

E
Claims for Actual Losses in Reorganizations

Once the reorganization plan is complete, the lender will provide the Agency with documentation of the actual loss sustained.

- **If the actual loss sustained is greater than the estimated loss payment, the lender may submit a revised estimated loss claim to obtain payment of the additional amount owed by the Agency under the guarantee.**
- **If the actual loss is less than the prior estimated loss, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.**

F
Payment to Holder in Reorganizations

In reorganization bankruptcy, if a holder makes demand upon the Agency, the Agency will pay the holder interest to the plan's effective date. Accruing interest thereafter will be based upon the provisions of the reorganization plan.

343 Lender's Claims for Expenses and Estimated Losses in Liquidation Bankruptcy Proceedings (7 CFR 762.148)

A Claims for Liquidation

[7 CFR 762.148(b)] Reasonable and customary liquidation expenses may be deducted from the proceeds of the collateral in liquidation bankruptcy cases.

- **In-house expenses are not considered reasonable and customary liquidation expenses and may not be deducted from collateral proceeds.**
- **[7 CFR 762.148(d)] Upon receipt of notification that a borrower has filed for protection under Chapter 7 of the Bankruptcy Code, or upon confirmation of a liquidation plan under Chapter 11, the lender must proceed according to the liquidation procedures of this part** (Part 14)**.**
- **If the property is abandoned by the trustee , the lender will conduct the liquidation according to § 762.149,** and seek to realize value from the property.
- **Proceeds received from partial sale of collateral during bankruptcy may be used by the lender to pay reasonable costs, such as freight, labor and sales commissions, associated with the partial sale. Reasonable use of proceeds for this purpose must be documented with the final loss claim in accordance with § 762.149(a)(vi).**

344-354 (Reserved)

Part 14 Liquidation

355 Liquidation Process (7 CFR 762.149)

A Liquidation Process Overview

After a lender has determined that a borrower's financial difficulties cannot be solved with any 1 or combination of the loan restructuring options, the lender must liquidate the loan. All lenders are expected to proceed with liquidation in the following chronological order.

- The lender must give the borrower notice that the loan will be liquidated.
- The lender must accelerate the note.
- The lender must prepare a liquidation plan. SEL and CLP lenders will provide FSA with a copy.
- The lender must submit an estimated loss claim with the liquidation plan if liquidation is expected to exceed 90 calendar days.
- The lender must liquidate the security.
- The lender must submit a final loss claim.
- The lender must remit future recoveries to FSA in proportion to the percentage of the guarantee.

Liquidation steps (maximum timeframes) are summarized as follows.

All dates measured in days after payment due date unless otherwise noted	
60 Days*	Earliest Date that Lender Can File to Liquidate Security
90 Days	Lender Gives Notice to Borrower and Accelerates the Loan or Implements a Loan Restructuring Plan
120 Days	Lender must reach decision as to whether the account will be restructured or liquidated.
150 Days	Liquidation plan and estimated loss claim must be submitted.
164 Days	Estimated protective advances must be concurred with by FSA.
170 Days	Liquidation plan must be approved by FSA.
180 Days	Estimated loss claim must be approved by FSA.
260 Days	Liquidation completed.
290 Days	Final loss claim submitted.
330 Days**	FSA should approve or request modification of final loss claim.
* 60 days after disposition of IA eligibility issue (see paragraph 300) ** 40 days after submission of final loss claim (see this paragraph)	

Continued on the next page

355 Liquidation Process (7 CFR 762.149) (Continued)

B
Earliest Date the Lender Can File to Liquidate Security

The lender may not initiate foreclosure action on the loan until 60 calendar days after eligibility of the borrower to participate in the IA Program has been established by FSA. The lender and borrower must discuss IA Program eligibility at the default meeting. See paragraph 300 for more information on this meeting. If IA eligibility was waived in writing by the borrower, the lender may prepare to liquidate the loan immediately following receipt of the waiver.

It is the lender's prerogative to request IA on a loan, regardless of the borrower's desire or eligibility for the subsidy. However, it must be considered and documented in some fashion that it was rejected as an option.

C
FSA-1980-44 Is Submitted

FSA-1980-44 must be submitted following the lender-borrower default meeting and every 60 calendar days thereafter. The original report will notify FSA that the borrower is in default. Subsequent FSA-1980-44 reports will comment on the progress of liquidation and identify any problems the lender is having or may have in completing the liquidation in a timely manner.

D
Decision to Liquidate Must Be Reached or a Loan Restructuring Plan Must Be Implemented

Sometime between the date that the borrower's payment was due but not paid and 45 calendar days thereafter, the lender is expected to notify the borrower of the default and meet with the borrower to discuss solutions. Within 75 calendar days of this meeting (or unsuccessful attempts to meet) the account should be paid current or restructured. If a solution that requires more than 75 calendar days (90 calendar days after default) is agreed to, the reasons should be indicated on FSA-1980-44.

Continued on the next page

355 Liquidation Process (7 CFR 762.149) (Continued)

E
Liquidation Plan and Estimated Loss Claim Must Be Submitted

Within 30 days of the decision to liquidate, standard eligible and CLP lenders will submit a written liquidation plan to the Agency (see paragraph 358). **An estimated loss claim will be submitted by the lender with the liquidation plan if the liquidation is expected to exceed 90 days** (see paragraph 359). **PLP lenders will submit a liquidation plan if it is required by their Lender's Agreement.**

If the liquidation is expected to be completed within 90 calendar days of the decision to liquidate, the submission of an estimated loss claim is not necessary.

If the lender estimates that liquidation will take less than 90 calendar days, FSA shall pay no more than 90 calendar days of interest on the final loss. Also, if liquidation is expected to take longer than 90 calendar days and the lender estimates that there will be no loss on the loan after considering the net recovery value of the security, the lender will either discontinue interest on the loan as of 90 calendar days after the decision to liquidate, or submit an estimated loss of $0. If the lender fails to report default on a guaranteed loan to FSA or otherwise comply with the requirements of this part, FSA shall pay interest that accrues only up to 90 calendar days after default as part of a final loss claim. Lenders will reimburse FSA for any overpayments on estimated loss claims at the time of a final loss, plus interest.

F
Liquidation Plan Is Approved or Rejected by FSA

When the decision has been made to liquidate, a liquidation plan is required to be submitted by a CLP lender or SEL in all cases, including where all of the security has been sold, the borrower is liquidating voluntarily, or when no loss is expected. FSA shall review a lender's liquidation plan and either approve it or request modifications within 20 calendar days after it is received. See subparagraph 358 F.

Continued on the next page

355 Liquidation Process (7 CFR 762.149) (Continued)

G
Liquidate

Liquidation is expected to be completed within 230 calendar days after the borrower was declared in default, unless otherwise approved in the liquidation plan.

H
Final Loss Claim Is Submitted

Lenders may submit a final loss claim when the security has been liquidated and all proceeds have been received and applied to the account. See paragraph 360.

A final loss claim should be submitted within 30 calendar days of the completion of liquidation or within 260 calendar days after the borrower was declared in default, unless an extension of this period is granted. A final loss claim will be reduced if there are unjustified delays in liquidation or submission of a claim.

356 Mediation (7 CFR 762.149(a))

A
Mediation Requirements

When it has been determined that a default cannot be cured through any of the servicing options available or if the lender does not wish to utilize any of the authorities provided in this part, the lender must:

- **participate in mediation according to the rules and regulations of any State which has a mandatory farmer-creditor mediation program**
- **consider private mediation services in those states which do not have a mandatory farmer-creditor mediation program**

  Note: Private mediation should be considered when it appears that an agreement may be reached. FSA will not pay for private mediation services.

- **not agree to any proposals to rewrite the terms of a guaranteed loan which do not comply with this part.**

Any agreements reached as a result of mediation involving defaults and or loan restructuring must have written concurrence from the Agency before they are implemented.

Continued on the next page

356 Mediation (7 CFR 762.149(a)) (Continued)

A Mediation Requirements (Continued)

If requested by the lender, FSA may participate in mediation to provide guidance on FSA regulations and guidelines. However, the FSA representative may not concur on any restructuring plans that require FSA approval during a mediation meeting. Restructuring plans developed during mediation that require FSA approval must be submitted to the local credit office according to Part 12.

Though not indicated in the liquidation time line, the mediation process should begin immediately following a lender's decision to liquidate a loan. If the borrower fails to attend the default meeting required by paragraph 300, or if this meeting does not result in a plan for restructuring, then the lender should notify the borrower of the results of the meeting and their intention to proceed with liquidation of the account. This notification should include an offer of mediation, an explanation of what mediation may accomplish, and instructions on how and where a mediation hearing may be requested. This information is available from FSA State Offices or the State Department of Agriculture of the State in which the borrower is located.

357 Foreclosure and Acceleration (7 CFR 762.149)

A Overview

Once the lender has made the decision to liquidate a loan, the lender must initiate foreclosure action and accelerate the loan. The lender may not initiate foreclosure action on the loan until 60 calendar days after eligibility of the borrower to participate in the IA Programs has been established by FSA. The lender may accelerate the loan before FSA approval of a liquidation plan.

B Borrower Files for Bankruptcy After Loan Note Is Accelerated

If the borrower files for bankruptcy after the loan note is accelerated, the lender suspends liquidation proceedings until 1 of the following actions:

- bankruptcy case is dismissed or closed
- order lifting automatic stay is obtained from the court
- property is no longer property of bankruptcy estate and customer has been discharged. See Part 13.

Continued on the next page

357 Foreclosure and Acceleration (7 CFR 762.149) (Continued)

C Acceleration

If the borrower is not in bankruptcy, the lender shall send the borrower notice that the loan is in default and the entire debt has been determined due and payable immediately after other servicing options have been exhausted. Foreclosure proceedings commence once a loan is accelerated.

The loan cannot be accelerated until after the borrower has been considered for Interest Assistance and the conclusion of mandatory mediation in accordance with § 762.149(a) (paragraph 356)**.**

The lender will submit a copy of the acceleration notice or other document to the Agency.

The lender accelerates a loan note by giving the borrower written notice via certified mail that the loan is in default and the entire debt is due and payable. The lender must make a copy of the acceleration notice and attach it to the first FSA-1980-44 that is submitted following note acceleration. Once a note is accelerated, the borrower will have 30 calendar days from the date of acceleration to make payment in full by cash, transfer, sale of property, or voluntary conveyance. If the borrower fails to satisfy the account in the 30-calendar-day period specified in the notice, the foreclosure process will continue until the loan security is liquidated.

Once the note is accelerated all other servicing procedures other than liquidation and its associated actions, such as making protective advances, cease.

Continued on the next page

357 Foreclosure and Acceleration (7 CFR 762.149) (Continued)

D
Foreclosure

The lender is responsible for determining who the necessary parties are to any foreclosure action or who should be named on a deed of conveyance taken in lieu of foreclosure.

When the property is liquidated, the lender will apply the net proceeds to the guaranteed loan debt.

When it is necessary to enter a bid at a foreclosure sale, the lender may bid the amount that it determines is reasonable to protect its and the Agency's interest. At a minimum, the lender will bid the lesser of the net recovery value or the unpaid guaranteed loan balance.

Foreclosure refers to the comprehensive process of preparing for and selling the collateral that secures a loan that is being liquidated. Therefore, the foreclosure process begins once the lender decides to accelerate the loan in preparation for liquidation and ends once the loan's security is liquidated.

358 Lender Liquidation Plan (7 CFR 762.149(b))

A
Overview

Once the decision has been made to liquidate, the lender must submit a liquidation plan and, if applicable, a request for IA reimbursement to FSA within 30 calendar days. The liquidation plan must include a schedule of all projected liquidation activities, and a complete inventory of the security to be sold.

B
General Requirements

If a default cannot be cured after considering servicing options and mediation, the lender will proceed with liquidation of the collateral in accordance with the following.

Continued on the next page

358 Lender Liquidation Plan (7 CFR 762.149(b))

B General Requirements (Continued)

Within 30 days of the decision to liquidate, all lenders will submit a written plan to the Agency which includes:

- **a current balance sheet from all liable parties or, if the parties are not cooperative, the best information available, or in liquidation bankruptcies, a copy of the bankruptcy schedules or discharge notice**

- **a proposed method of maximizing the collection of debt which includes specific plans to collect any remaining loan balances on the guaranteed loan after loan collateral has been liquidated, including possibilities for judgment**

  Notes: If the borrower has converted loan security, the lender will determine whether litigation is cost effective. The lender must address, in the liquidation plan, whether civil or criminal action will be pursued. If the lender does not pursue the recovery, the reason must be documented when an estimated loss claim is submitted (subparagraph 360 E)**.**

  Any proposal to release the borrower from liability will be addressed in the liquidation plan in accordance with § 762.146(c)(2) (paragraph 361)**.**

- **an independent appraisal report on all collateral securing the loan that meets the requirements of § 762.127** (paragraphs 181 through 183) **and a calculation of the net recovery value of the security as defined in §762.102** (Exhibit 10)**. The appraisal requirement may be waived by the Agency in the following cases:**

  - **the bankruptcy trustee is handling the liquidation and the lender has submitted the trustee's determination of value**

Continued on the next page

358 Lender Liquidation Plan (7 CFR 762.149(b)) (Continued)

B General Requirements (Continued)

- **the lender's proposed method of liquidation rarely results in receipt of less than market value for livestock and used equipment**
- **a purchase offer has already been received for more than the debt.**

- **an estimate of time necessary to complete the liquidation**
- **an estimated loss claim if the liquidation period is expected to exceed 90 days** (paragraph 359)
- **an estimate of reasonable liquidation expenses**
- **an estimate of any protective advances** (paragraph 360)**.**

C Liquidation Status Reports

Lenders must submit FSA-1980-44 to FSA every 60 calendar days during liquidation to report on the progress of liquidation. This report should provide information on the disposition of collateral, costs incurred, and specific actions taken by the lender or their representative since the previous FSA-1980-44 submission.

Details on future planned actions and their estimated dates, must be identified on FSA-1980-44. Further, any changes in the approved liquidation plan must also be identified on FSA-1980-44.

D IA Reimbursement

IA payment will be conducted according to paragraph 228.

E Lender Liquidation Plan and Holders

If the guaranteed portion of a loan undergoing liquidation was sold on the secondary market, see Part 15.

Continued on the next page

358 Lender Liquidation Plan (7 CFR 762.149(b)) (Continued)

E
Lender Liquidation Plan and Holders (Continued)

If the holder has not requested the lender to repurchase the guarantee but the lender determines that repurchase of the guarantee is necessary to adequately service the loan, the lender may repurchase the guaranteed portion of the loan from the holder, with the written approval of FSA. See Part 15 for information on the repurchase of loans sold on the secondary market and FSA approval of repurchase.

If the loan undergoing liquidation was sold on the secondary market and the unpaid guaranteed portion is still held by the holder at the time of liquidation plan submission, the liquidation plan must address the lender's plans to repurchase the guarantee. If the lender does not plan to repurchase the guarantee, the liquidation plan must include written notice from the holder certifying that the holder wishes to keep the guarantee during liquidation. If the lender plans to repurchase the guarantee, the date of planned repurchase must be noted in the liquidation plan along with a request for FSA concurrence on the repurchase.

F
FSA Approval of Liquidation Plan

[7 CFR 762.149(c)] CLP lender's or standard eligible lender's liquidation plan, and any revisions of the plan, must be approved by the Agency.

If, within 20 calendar days of the Agency's receipt of the liquidation plan, the Agency fails to approve it or fails to request that the lender make revisions, the lender may assume the plan is approved. The lender may then proceed to begin liquidation actions at its discretion as long as it has been at least 60 days since the borrower's eligibility for interest assistance was considered.

Upon receipt of the plan, FSA has 20 calendar days to respond in writing, either granting approval of the plan or requesting modification of the plan. The lender's liquidation plan must be submitted to the local FSA office.

As part of a liquidation plan or a method for liquidation, the lender may propose to accept a deed from the borrower in lieu of a forced liquidation. The estimated loss claim will be based on the net recovery value of the property at the time the lender takes possession of it.

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359 Lender Submission of Estimated Loss Claim (7 CFR 762.149)

A Overview

An estimated loss claim will be submitted by the lender with the liquidation plan if the liquidation is expected to exceed 90 days. The estimated loss will be based on the following:

- **the Agency will pay the lender the guaranteed percentage of the total outstanding debt, less the net recovery value of the remaining security, less any unaccounted for security**
- **the Agency will either contact the lender to resolve any concerns related to the estimated loss claim or pay the claim within 30 days of receiving the completed RD-449-30**
- **the lender will discontinue interest accrual on the defaulted loan at the time the estimated loss claim is paid by the Agency. If the lender estimates that there will be no loss after considering the costs of liquidation, interest accrual will cease after 90 days from the decision to liquidate or an estimated loss of zero will be submitted.**

B Estimated Liquidation Expenses

Certain reasonable costs to liquidate a loan may be included in the estimated loss claim. Eligible liquidation expenses include, but are not limited to, the following:

- appraisals
- marketing expenses
- auctioneer expenses.

In-house expenses are not allowable liquidation costs. In-house expenses include, but are not limited to, the following:

- employee salaries
- staff lawyers
- photocopying
- travel.

Continued on the next page

359 Lender Submission of Estimated Loss Claim (7 CFR 762.149) (Continued)

C
Lender Submission of Estimated Loss Claim

Lenders will submit the estimated loss claim to FSA on RD-449-30 prepared according to the instructions attached to RD-449-30. Calculations and other documentation to support the figures and estimates used on RD-449-30 must be attached.

The lender must justify and explain any liquidation expenses on the estimated loss claim in a separate memo submitted with the estimated loss claim. Contact FSA for an example of a completed estimated loss claim.

D
Unapproved Loans or Advances

The amount of any payments made by the borrower on unapproved loans or advances outside of the guarantee will be deducted from any loss claim submitted by the lender on the guaranteed loan, if that loan or advance was paid prior, and to the detriment of, the guaranteed loan.

E
FSA Approval of Protective Advances

FSA will approve a request for a protective advance if the request is reasonable and the value of the security would decrease significantly if the advance was not made. PLP lenders will seek approval of protective advances according to FSA-1980-38.

F
Application of Estimated Loss Payment

The lender will apply the estimated loss payment to the outstanding balance owed on the guaranteed debt. **The lender will discontinue interest accrual on the defaulted loan at the time the estimated loss claim is paid by the Agency. If the lender estimates that there will be no loss after considering the costs of liquidation, interest accrual will cease 90 days after the decision to liquidate or an estimated loss of zero will be submitted.**

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360 Lender Submission of Final Loss Claim (7 CFR 762.149)

A Overview

Lenders may submit a final loss claim when the security has been liquidated and all proceeds have been received and applied to the account.

B General Requirements

If a lender acquires title to property either through voluntary conveyance or foreclosure proceeding, the lender will submit a final loss claim after disposing of the property. The lender may pay reasonable maintenance expenses to protect the value of the property while it is owned by the lender. These may be paid as protective advances or deducted as liquidation expenses from the sales proceeds when the lender disposes of the property. The lender must obtain Agency written concurrence before incurring maintenance expenses which exceed the amounts allowed in § 762.149(e)(1) (subparagraph D)**.**

The lender will make its records available to the Agency for the Agency's audit of the propriety of any loss payment.

The final loss claim will be based on the amount received from the sale of the property, less expenses incurred for its care and maintenance, assuming the lender has acted expeditiously and prudently to sell it.

C Lender Submission of Final Loss Claim

All lenders will submit the following documents with a final loss claim:

- **an accounting of the use of loan funds**
- **an accounting of the disposition of loan security and its proceeds**
- **a copy of the loan ledger indicating loan advances, interest rate changes, protective advances, and application of payments, rental proceeds, and security proceeds, including a running outstanding balance total**
- **documentation, as requested by the Agency, concerning the lender's compliance with the requirements of this part.**

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C
Lender Submission of Final Loss Claim (Continued)

The lender will designate one or more financial institutions to which any Agency payments will be made via electronic funds transfer.

Lenders should also submit the Electronic Funds Transfer account number that wish to be used for transmission of any loss payment from the Government.

The lender must justify and explain protective advances and liquidation expenses in a separate cover memo submitted with the final loss claim.

D
Protective Advances

Protective advances are expenses incurred by a lender to protect or preserve collateral from loss or deterioration. Protective advances should be shown on RD-449-30.

Prior written authorization from the Agency is required for all protective advances in excess of $5,000 for CLP lenders, $3,000 for standard eligible lenders. The dollar amount of protective advances for PLP lenders will be specified when PLP status is awarded by the Agency or as contained in the Lender's Agreement.

The lender may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances allowed in this part, plus interest that accrues on the protective advances.

Payment for protective advances is made by the Agency when the final loss claim is approved, except in bankruptcy actions.

Protective advances are used only when the borrower is in liquidation, liquidation is imminent, or when the lender has taken title to real property in a liquidation action.

Legal fees are not a protective advance.

Continued on the next page

D
Protective Advances (Continued)

Protective advances may only be made when the lender can demonstrate the advance is in the best interest of the lender and the Government.

Protective advances must constitute a debt of the borrower to the lender and be secured by the security instrument.

Protective advances must not be made in lieu of additional loans.

Protective advances approved by FSA may be made by a lender to protect or preserve the collateral from loss or deterioration. Additional loans made to improve the value of security, such as loans for home improvement, are not protective advances and should not be approved. Protective advances and the interest that accrues on the advances are covered by the guarantee.

E
FSA Approval and Payment of Final Loss Claim

The Agency will notify the lender of any discrepancies in the final loss claim or, approve or reject the claim within 40 days.

The Agency will reduce a final loss claim based on its calculation of the dollar amount of loss caused by the lender's negligent servicing of the account. Loss claims may be reduced or rejected as a result of the following:

- **a loss claim may be reduced by the amount caused by the lender's failure to secure property after a default, and will be reduced by the amount of interest that accrues when the lender fails to contact the borrower or takes no action to cure the default, once it occurs**
- **losses incurred as a result of interest accrual during excessive delays in collection, as determined by the Agency, will not be paid**
- **unauthorized release of security proceeds, failure to verify ownership or possession of security to be purchased, or failure to inspect collateral as often as required to ensure its maintenance.**

Continued on the next page

360 Lender Submission of Final Loss Claim (7 CFR 762.149) (Continued)

E FSA Approval and Payment of Final Loss Claim (Continued)

Losses will not be reduced for the following:

- **servicing deficiencies that did not contribute materially to the dollar amount of the loss**

- **unaccounted for security, as long as the lender's efforts to locate and recover the missing collateral was equal to that which would have been expended in the case of an unguaranteed loan in the lender's portfolio.**

Default interest, late charges, and loan servicing fees are not payable under the loss claim.

The final loss will be the remaining outstanding balance after application of the estimated loss payment and the application of proceeds from the liquidation of the security. The lender will designate one or more financial institutions to which any Agency payments will be made via electronic funds transfer.

Interest accrual on a final loss should be the same as on the estimated loss except for the amount that accrued while the payment was being issued. If an estimated loss was not paid, liquidation was unduly delayed, or the lender did not comply with the reporting requirements of this part, interest accrual will be included on the claim to the date that liquidation should have reasonably been accomplished. In any case, interest accrual will only be paid more up to 90 calendar days after the decision is made to liquidate.

FSA may pay a loss when a borrower sells security out of trust. If the borrower has converted loan security, the lender shall determine whether litigation is cost-effective. The lender must determine whether civil or criminal action is cost-effective and will be pursued. If the lender does not pursue the recovery, the reason must be documented when a loss claim is submitted. If recovery of converted security through legal action is possible, a lender may still submit a final loss claim and reimburse FSA according to subparagraph 362 A after proceeds are collected.

Continued on the next page

360 Lender Submission of Final Loss Claim (7 CFR 762.149) (Continued)

F Overpayment

If the final loss is less than the estimated loss, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of the estimated loss payment.

G Return of Guarantee

The lender will return the original Guarantee marked paid after receipt of a final loss claim.

361 Release of Liability After Liquidation (7 CFR 762.146(c))

A Overview

After a final loss claim has been paid, the lender can release the borrower or any guarantor from liability with FSA concurrence. The lender will decide whether or not to seek release of liability for a borrower or entity based on an assessment of the value of any income or assets to offset FSA or lender losses. Lenders must submit a narrative to FSA explaining the borrower or entity should be released from liability.

B General Requirements

After a final loss claim has been paid on the borrower's account, the lender may release the borrower or guarantor from liability if:

- **the Agency agrees to the release in writing**
- **the lender documents its consideration of the following factors concerning the borrower or guarantors:**
  - **the likelihood that the borrower or guarantor will have a sufficient level of income in the reasonably near future to contribute to a meaningful reduction of the debt**
  - **the prospect that the borrower or guarantor will inherit assets in the near term that may be attached by the Agency for payment of a significant portion of the debt**

Continued on the next page

361 Release of Liability After Liquidation (7 CFR 762.146(c)) (Continued)

B General Requirements (Continued)

- **whether collateral has been properly accounted for, and whether liability should be retained in order to take action against the borrower or a third party for conversion of security property**
- **the availability of other income or assets which are not security**
- **the possibility that assets have been concealed or improperly transferred**
- **the effect of other guarantors on the loan**
- **cash consideration or other collateral in exchange for the release of liability.**

The lender will execute its own release of liability documents.

362 Miscellaneous Liquidation Items (7 CFR 762.149)

A Future Recovery

The lender will remit any recoveries made on the account after the Agency's payment of a final loss claim to the Agency in proportion to the percentage of guarantee in accordance with the Lender's Agreement until the account is paid in full or otherwise satisfied.

A lender receiving a loss payment must complete and return in a timely manner FSA-1980-26, Report on Collection Activities on Liquidated Accounts, for each unsatisfied account for three years following payment of loss claims.

Each year, FSA shall forward FSA-1980-26 with instructions to lenders who have received a loss claim because of liquidation in the past 3 years. FSA-1980-26 must be completed by the lender and returned to FSA by November 30.

Continued on the next page

362 Miscellaneous Liquidation Items (7 CFR 762.149) (Continued)

B FSA Option to Liquidate

At its option, the Agency may liquidate the guaranteed loan as follows.

- **Upon Agency request, the lender will transfer to the Agency all rights and interests necessary to allow the Agency to liquidate the loan. The Agency will not pay the lender for any loss until after the collateral is liquidated and the final loss is determined.**
- **If the Agency conducts the liquidation, interest accrual will cease on the date the Agency notifies the lender in writing that it assumes responsibility for the liquidation.**

363-373 (Reserved)

Part 15 Secondary Market

374 Agency Requirements (7 CFR 762.160)

A Loan Requirements for Sale on the Secondary Market

Subject to Agency concurrence, the lender may sell, assign or participate all or part of the guaranteed portion of the loan to one or more holders at or after loan closing, only if the loan is not in default. However, a line of credit can be participated, but not sold or assigned.

The Agency may refuse to execute the Assignment of Guarantee and prohibit the sale when the Agency purchased and is holder of a loan that was sold by the lender that is requesting the assignment and the lender has not complied with the reimbursement requirements of § 762.144 (c)(7) (paragraph 376) **of this part, except when the 180 day reimbursement or liquidation requirement has been waived by the Agency.**

The guaranteed portion of the loan may not be sold or assigned by the lender until the loan has been fully disbursed to the borrower. A line of credit may be participated prior to being fully advanced.

The lender is not permitted to sell, assign or participate any amount of the guaranteed or unguaranteed portion of loan to the loan applicant or borrower, or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary, or affiliate.

Upon the lender's sale or assignment of the guaranteed portion of the loan, or participation of the line of credit, the lender will remain bound to all obligations indicated in the Guarantee, Lender's Agreement, the Agency program regulations, and to future program regulations not inconsistent with the provisions of the Lenders Agreement. The lender retains all rights under the security instruments for the protection of the lender and the United States.

Continued on the next page

374 Agency Requirements (7 CFR 762.160) (Continued)

A Loan Requirements for Sale on the Secondary Market (Continued)

The lender may sell, assign or participate all or part of the guaranteed portion of the loan to 1 or more holders at or after loan closing if the loan is not in default and proceeds have been fully disbursed.

Only the guaranteed portion of a loan may be sold on the secondary market. In a secondary market sale, the guaranteed portion of the loan is transferred to a holder while the lender keeps servicing responsibilities for the loan.

The lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion of the loan to the applicant or borrower; members of their immediate families; their officers, directors, stockholders, or other owners; or any parent, subsidiary, or affiliate.

B LOC Requirements for Sale on the Secondary Market

In a participation, the lender sells an interest in a loan but retains the note, the collateral securing the note, and all responsibility for loan servicing and liquidation. The guarantee does not encompass the participant.

The lender must retain at least 10 percent of the total guaranteed loan amount from the unguaranteed portion of the loan in its portfolio, except when the loan guarantee exceeds 90 percent, the lender must retain the total unguaranteed portion.

Participation with a lender by any entity does not make that entity a holder or a lender as defined in this part.

LOC's may be participated, but may not be sold or assigned. No Agency notification is required if the lender merely chooses to "participate" the loan.

Continued on the next page

374 Agency Requirements (7 CFR 762.160) (Continued)

C Transfer to the Secondary Market

Negotiations concerning premiums, fees, and additional payments for loans are to take place between the holder and the lender. The Agency will participate in such negotiations only as a provider of information.

Review documents. The broker or intermediary should send the lender a purchase commitment letter. The lender must notify the FSA office that the loan is being sold and obtain the documents that the lender will need to execute. To complete the sale, the lender should sign and return 1 copy of the commitment letter to the broker along with the following:

- copy of the note
- copy of FSA-1980-27 (or previous versions)
- FSA-1980-36
- certificate of incumbency certifying that the FSA employee signing the guarantee had the authority to sign the necessary documents, **if** requested by the holder or broker.

Close the transaction.

- Upon receipt of the forms, the holder or broker prepares FSA-1980-36 and sends it to the lender in triplicate. For sales to Farmer Mac, FSA-1980-36 is prepared by the lender.
- The lender signs all 3 forms and forwards them to FSA for execution.
- FSA signs the forms and forwards them to the investment broker. The settlement date is established by the broker.
- The broker returns the original copy to the lender and another copy to FSA.
- On settlement date, the broker wires the funds to the lender.

Continued on the next page

374 Agency Requirements (7 CFR 762.160) (Continued)

D Agency Executions of FSA-1980-36

The lender shall provide FSA with copies of all appropriate forms used in the sale or assignment.

If a lender intends to sell the loan to the secondary market, they should inform FSA of their plans during the post-closing review (paragraph 247).

In selling a loan on the secondary market, lender will occasionally break the loan into more than 1 note. For each note, FSA will need a separate FSA-1980-27 and the lender/broker or holder will need to execute a separate FSA-1980-36. See subparagraph C.

Once the lender accepts a specific buyer's offer, the lender should notify FSA that the loan is being sold.

Upon the lender's sale or assignment of the guaranteed portion of the loan, or participation of the line of credit, the lender will remain bound to all obligations indicated in the Guarantee, lender's agreement, the Agency program regulations and to future program regulations not inconsistent with the provisions of the lender's agreement. The lender retains all rights under the security instruments for the protection of the lender and the United States.

The lender will send the holder the borrower's executed note attached to the Guarantee.

The holder will succeed to all rights of the guarantee pertaining to the portion of the loan purchased.

The holder, upon written notice to the lender and the Agency, may assign the unpaid guaranteed portion of the loan. The holder must sell the guaranteed portion back to the original lender if necessary for servicing or liquidation of the account.

Once the Authorized Agency Official is satisfied that all 3 of the above conditions are met, they will execute the Assignment of Guarantee (FSA-1980-36) **and return all copies to the holder.**

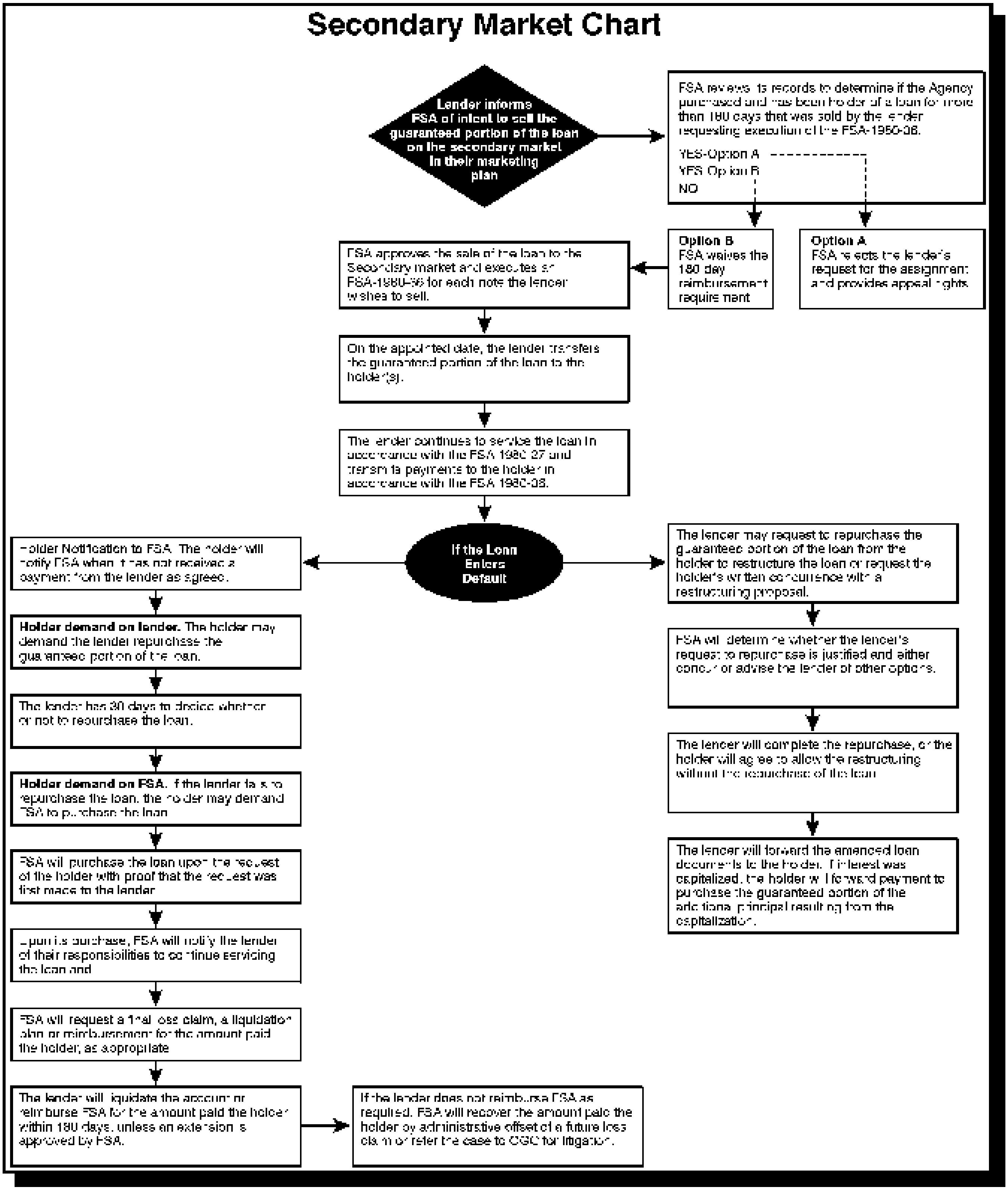
The guarantee or assignment of guarantee in the holder's possession does not cover interest accruing 90 days after the holder has demanded repurchase by the lender, except as provided in the assignment of guarantee and § 762.144(c)(3)(iii), or interest accruing 90 days after the lender or the Agency requested the holder to surrender evidence of debt repurchase, if the holder has not previously demanded repurchase.

Continued on the next page

374 Agency Requirements (7 CFR 762.160) (Continued)

E
Secondary Market Flowchart

Following is the secondary market flowchart.



375 Repurchase of Guaranteed Portion From a Secondary Market Holder (7 CFR 762.144)

A
Holder Demand for Repurchase

The holder may request the lender to repurchase the unpaid guaranteed portion of the loan when either**:**

- **the borrower has not made a payment of principal and interest due on the loan for at least 60 days**
- **the lender has failed to give the holder its pro-rata share of any payment made by the borrower within 30 days of receipt of a payment.**

The holder shall notify FSA when these circumstances exist.

When a lender is requested to repurchase a loan from the holder, the lender must consider the request according to the servicing actions that are necessary on the loan. In order to facilitate servicing and simplified accounting of loan transactions, lenders are encouraged to repurchase the loan upon the holder's request.

If the lender does not repurchase the loan, the holder must inform the Agency in writing that demand was made on the lender and the lender refused. Following the lender's refusal, the holder may continue as holder of the guaranteed portion of the loan or request that the Agency purchase the guaranteed portion. Within 30 days after written demand to the Agency from the holder with required attachments, the Agency will forward to the holder payment of the unpaid principal balance, with accrued interest to the date of repurchase. If the holder does not desire repurchase or purchase of a defaulted loan, the lender must forward the holder its pro-rata share of payments, liquidation proceeds and Agency loss payments.

If the lender believes the holder is making demand for repayment outside the allowable reasons, the lender should detail why they believe the demand is unreasonable in a refusal letter to the holder. A copy of this letter should also be forwarded to FSA.

Upon repurchase, the lender shall notify FSA by returning the original FSA-1980-36.

Continued on the next page

375 Repurchase of Guaranteed Portion From a Secondary Market Holder (7 CFR 762.144) (Continued)

B
Lender Initiated Repurchase

If due to loan default or imminent loan restructuring, the lender determines that its repurchase is necessary to adequately service the loan, the lender may repurchase the guaranteed portion of the loan from the holder, with the written approval of the Agency.

The requirements in FSA-1980-36 are as follows:

- the lender may demand repurchase to conduct any of the servicing actions in Part 9, 12, or 14
- lender repurchase is not required if the holder will agree to the restructured terms of the note
- if interest is capitalized, a new note is taken, the original note is amended, or the principal amount is modified, the lender must ensure that the assignment is amended to reflect the actual guaranteed portion held by the holder

  Note: In cases involving the secondary market, a restructuring action may involve repurchase from the holder.

- **the lender will not repurchase from the holder for arbitrage purposes**

  Note: With its request for Agency concurrence, the lender will notify the Agency of its plans to resell the guaranteed portion following servicing.

- **the holder will sell the guaranteed portion of the loan to the lender for an amount agreed to between the lender and the holder.**

If the lender chooses to repurchase the loan for servicing, SEL and CLP lenders must receive written approval from the Authorized Agency Official or SED or designee before repurchasing a guarantee. The request for approval must include the reason for repurchase; for example, IA, interest rate adjustments, default, restructuring, or liquidation; and the proposed servicing or liquidation plan, if any, for the loan or asset.

Continued on the next page

375 Repurchase of Guaranteed Portion From a Secondary Market Holder (7 CFR 762.144) (Continued)

B
Lender Initiated Repurchase (Continued)

Once the request is received by FSA, the lender will receive notification of FSA's approval or rejection within 14 calendar days. PLP's do not need Agency approval to repurchase, but must repurchase the guarantee according to the terms of their FSA-1980-38.

The lender must document all attempts to repurchase the loan from the holder in the loan file.

C
Purchase of the Loan or Note by FSA

With its demand on the Agency, the holder will include:

- **a copy of the written demand made upon the lender**
- **originals of the Guarantee and note properly endorsed to the Agency, or the original of the Assignment of Guarantee**
- **a copy of any written response to the demand provided by the lender to the holder**
- **an account which the Agency can forward the purchase amount to via electronic funds transfer.**

The amount due the holder from the Agency includes unpaid principal, unpaid interest to the date of demand, and interest which has accrued from the date of demand to the proposed payment date.

Upon Agency request, the lender will provide a current statement stating the unpaid principal and interest owed by the borrower and the amount due the holder. A bank officer must certify the statement. Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved by the lender and the holder before payment will be approved by the Agency.

Continued on the next page

375 Repurchase of Guaranteed Portion From a Secondary Market Holder (7 CFR 762.144) (Continued)

C Repurchase of the Loan or Note by FSA (Continued)

The Agency will not participate in resolution of any such discrepancy. When there is a discrepancy, the 30 day Agency payment requirement to the holder will be suspended until the discrepancy is resolved (subparagraph A).

Within 30 calendar days of the holder's demand for purchase, FSA will verify the amounts owed to the lender and the holder and process it for payment.

Note: Restructuring of the loan cannot occur once FSA purchase occurs.

At the time of purchase by the Agency, the original Assignment of Guarantee (FSA-1980-36) **will be assigned by the holder to the Agency without recourse, including all rights, title, and interest in the loan.**

Purchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency specified in the Lender's Agreement or the Guarantee. Nor does the purchase waive any of the Agency's rights against the lender. The Agency succeeds to all rights of the holder under the Guarantee including the right to set-off against the lender.

D Repurchase Price of the Loan or Note

The repurchase by the lender will be for an amount equal to the portion of the loan held by the holder plus accrued interest.

The Agency Guarantee will not cover servicing fees that the lender accrues after the repurchase.

When the lender makes a demand on FSA to purchase the guaranteed portion of the loan, the purchase price will be equal the unpaid principal and accrued interest. See subparagraph E.

Continued on the next page

375 Repurchase of Guaranteed Portion From a Secondary Market Holder (7 CFR 762.144) (Continued)

E
Interest Paid Upon Agency Repurchase

In the case of a request for Agency purchase, the government will only pay interest that accrues for up to 90 days from the date of the demand letter to the lender requesting the repurchase. However, if the lender requested repurchase from the Agency within 60 days of the request to the holder and for any reason not attributable to the holder and the lender, the Agency cannot make payment within 30 days of the holder's demand to the Agency, the holder will be entitled to interest to the date of the payment (7 CFR 762.160(b)(4)(i)) (subparagraph 374 D).

If at the time the holder requests FSA to purchase a loan or note, more than 90 calendar days have passed since the holder's demand to the lender, the holder will only receive principal and interest due at the time of the holder's request to the lender.

376 Actions After Agency Repurchase (7 CFR 762.144)

A
Request for Lender Repayment

Within 180 days of the Agency's repurchase, the lender will reimburse the Agency the amount of purchase, plus accrued interest, in one of the following ways:

- **by liquidating the loan security and paying the Agency its pro-rata share of liquidation proceeds**
- **paying the Agency [from it's own capital] the full amount paid to the holder plus any accrued interest**
- **the Agency may sell a purchased guaranteed loan on a non-recourse basis, if it determines that selling the portion of the loan that it holds is in the Government's best interest.**

A non-recourse purchase from the Agency requires a written request to the Agency from the party that wishes to purchase it, and written concurrence from the lender. A nonrecourse sale will be at a price determined by DAFLP, of the National Office of FSA. The request for a nonrecourse purchase from FSA must be submitted to the FSA State Office. The State Office will forward the request to the National Office with its recommendation and rationale for approval. Rejection of an offer for nonrecourse purchase is not appealable.

Continued on the next page

376 Actions After Agency Repurchase (7 CFR 762.144) (Continued)

B
Failure to Reimburse FSA

If the lender does not reimburse FSA within 180 calendar days, **the lender will be liable for the repurchase amount and any expenses incurred by the Agency to maintain the loan in its portfolio or liquidate the security. While the Agency holds the guaranteed portion of the loan, the lender will transmit to the Agency any payment received from the borrower, including the pro-rata share of liquidation or other proceeds.**

If the borrower files for reorganization under the provisions of the bankruptcy code or pays the account current while the purchase by the Government is being processed, the Agency may hold the loan as long it determines this action to be in the Agency's interest. If the lender is not proceeding expeditiously to collect the loan or reimbursement is not waived under this paragraph, the Agency will demand payment by the lender and collect the purchase amount through administrative offset of any claims due the lender.

Reports, Forms, Abbreviations, and Redelegations of Authority

Reports

None

Forms

This table lists all forms referenced in this handbook.

Number	Title	Display Reference	Reference
AD-1026	Highly Erodible Land Conservation and Wetland Conservation Certification		69.5, 208
FEMA-81-93	Standard Flood Hazard Determination Form		138
FSA-440-32	Request for Statement of Debts and Collateral		152
FSA-1980-01	Lender's Processing Checklist		69
FSA-1980-15	Conditional Commitment		Text
FSA-1980-22	Lender Certification		247
FSA-1980-24	Request for Interest Assistance Payment		228, 326
FSA-1980-25	Application for Guarantee		69.5, 69.7, 72, 208, 209
FSA-1980-26	Report on Collection Activities on Liquidated Accounts		266, 362
FSA-1980-27	Loan Guarantee		69.7, 226, 230, 247, 248, 250, 374
FSA-1980-28	Preferred Lender Application for Guarantee		70
FSA-1980-36	Assignment of Guarantee		374, 375
FSA-1980-38	Lender's Agreement		Text
FSA-1980-41	Guaranteed Farm Loan Status Report as of ________________		266
FSA-1980-44	Guaranteed Farm Loan Default Status Report		Text

Continued on the next page

Forms (Continued)

Number	Title	Display Reference	Reference
FSA-1980-64	Interest Assistance Agreement		224, 227, 228, 230, 231, 287
FSA-1980-84	Modification of Loan Guarantee		313, 326
FSA-1980-88	Farm Loan Programs Guaranteed Writedown Worksheet		328
FSA-1980-89	Shared Appreciation Agreement for Guaranteed Loans		181, 288, 328, 341
RD-449-30	Loan Note Guarantee Report of Loss		136, 328, 342, 359
RD-1910-5	Request for Verification of Employment		152
RD-1980-19	Guaranteed Loan Closing Report		227, 247
RD-1980-47	Guaranteed Loan Borrower Adjustments		284
W-2	Wage and Tax Statement		152

Abbreviations Used in This Handbook

The following abbreviations are used in this handbook.

Approved Abbreviation	Term	Reference
ALP	Approved Lender Program	34
CLP	Certified Lender Program	Text
CONACT	Consolidated Farm and Rural Development Act	108

Continued on the next page

Abbreviations Used in This Handbook (Continued)

Approved Abbreviation	Term	Reference
ECOA	Equal Credit Opportunity Act	31, 210
EM	emergency loans	108, 138
FmHA	Farmer's Home Administration (replaced by FSA)	108
FO	farm ownership loan	Text
FSA	Farm Service Agency	Text, Ex. 2
IA	interest assistance	Text
LOC	line of credit	Text
OL	operating loan	Text
PLP	Preferred Lender Program	Text
SAA	Shared Appreciation Agreement	286, 288
SED	State Executive Director	375, Ex. 2
SEL	Standard Eligible Lender	Text
SW	soil and water loan	49, 50, 52, 108, 326
USPAP	Uniformed Standards of Professional Appraisal Practice	181, 183

Redelegations of Authority

This table lists the redelegations of authority in this handbook.

Redelegation	Reference
Loan approval authorities	244

Definitions of Terms Used in This Handbook

Additional Security	Additional security is **collateral in excess of that needed to fully secure the loan**.
Allonge	Allonge is **an attachment or an addendum to a note**.
Applicant	**For guaranteed loans, the lender requesting a guarantee is the applicant. The party applying to the lender for a loan will be considered the loan applicant.**
Approval Official	An approval official is the FSA official authorized to approve a loan or servicing request. The official is determined depending on the dollar limitations and other conditions applicable to a particular action.
Aquaculture	Aquaculture is **the husbandry of aquatic organisms in a controlled or selected environment. An aquatic organism is any fish, amphibian, reptile, or aquatic plant. An aquaculture operation is considered to be a farm only if it is conducted on the grounds which the loan applicant owns, leases, or has an exclusive right to use. An exclusive right to use must be evidenced by a permit issued to the loan applicant and the permit must specifically identify the waters available to be used by the loan applicant only.**
Assignment of Guaranteed Portion	Assignment of guaranteed portion is the **process by which the lender transfers the right to receive payments or income on the guaranteed loan to another party, usually in return for payment in the amount of the loan's guaranteed principal. The lender retains the unguaranteed portion in its portfolio and receives a fee from the purchaser or assignee to service the loan, and receive and remit payments according to a written assignment agreement. This assignment can be reassigned or sold multiple times.**

Continued on the next page

Definitions of Terms Used in This Handbook (Continued)

Average Farm Customers	Average farm customers are **those conventional farm borrowers who are required to pledge their crops, livestock, and other chattel and real estate security for the loan. This does not include high-risk farmers with limited security and management ability who are generally charged a higher interest rate by conventional agricultural lenders. Also, this does not include low-risk farm customers who obtain financing on a secured or unsecured basis, who have as collateral items such as savings accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance which they are able to pledge for the loan.**
Basic Security	Basic security is **all farm machinery, equipment, vehicles, foundation and breeding livestock herds and flocks, including replacements, and real estate which serves as security for a loan guaranteed by the Agency.** With respect to livestock herds and flocks, animals that are sold as a result of the normal culling process are basic security unless the borrower has replacements that will keep numbers and production up to planned levels. However, if a borrower plans to make a significant reduction in his or her basic livestock herd or flocks, the animals that are sold in making this reduction will be considered basic security.
Beginning Farmer or Rancher	**A beginning farmer or rancher is an individual or entity who:** **C meets the loan eligibility requirements for OL or FO assistance, as applicable** **C has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years; this requirement applies to all members of an entity** **C will materially and substantially participate in the operation of the farm or ranch** **Notes: In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.**

Continued on the next page

Beginning Farmer or Rancher (Continued)

In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the individual provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm or ranch would be seriously impaired.

- **agrees to participate in any loan assessment, and financial management programs required by Agency regulations**

- *--except for applicants for operating loans, **does not own real farm or ranch--* property or who, directly or through interests in family farm entities owns real farm or ranch property, the aggregate acreage of which does not exceed 25 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located**

  Note: If the farm is located in more than one county, the average farm acreage of the county where the loan applicant's residence is located will be used in the calculation. If the loan applicant's residence is not located on the farm or if the loan applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census or USDA.

- **demonstrates that the available resources of the loan applicant and spouse (if any) are not sufficient to enable the loan applicant to enter or continue farming or ranching on a viable scale**

- **in the case of an entity:**

  - **all the members are related by blood or marriage**

  - **all the stockholders in a corporation are qualified beginning farmers or ranchers.**

Borrower

A borrower is **an individual or entity which has outstanding obligations to the lender under any Agency loan program. A borrower includes all parties liable for Agency debt, including collection-only borrowers, except those whose total loan and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all Agency debt.**

Continued on the next page

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Cash Flow Budget	Cash flow budget is a **projection listing all anticipated cash inflows (including all farm income, nonfarm income and all loan advances) and all cash outflows (including all farm and nonfarm debt service and other expenses) to be incurred by the borrower during the period of the budget. Cash flow budgets for loans under $50,000 do not require income and expenses itemized by categories. A cash flow budget may be completed either for a 12 month period, a typical production cycle or the life of the loan, as appropriate. It may also be prepared with a breakdown of cash inflows and outflows for each month of the review period and includes the expected outstanding operating credit balance for the end of each month. The latter type is referred to as a "monthly cash flow budget".**
Collateral	Collateral is **property pledged as security for a loan to ensure repayment of an obligation.**
Conditional Commitment	A conditional commitment is **the Agency's commitment to the lender that the material it has submitted is approved subject to the completion of all conditions and requirements contained therein.**

Continued on the next page

Consolidation	Consolidation is **the combination of outstanding principal and interest balance of two or more OL loans.**
Controlled	Controlled is **when a director or employee has more than a 50 percent ownership in the entity or, the director or employee, together with relatives of the director or employee, have more than a 50 percent ownership.**
Cooperative	A cooperative is **an entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State in which the entity will operate a farm.**
Cosigner	A consigner is **a party who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the terms of the note. In the case of an entity loan applicant, the cosigner cannot be a member, partner, joint operator, or stockholder of the entity.**
County Average Yield	The county average yield is **the historical average yield for a commodity in a particular political subdivision, as determined or published by a government entity or other recognized source.**
Debt Writedown	A debt writedown is **to reduce the amount of the borrower's debt to that amount that is determined to be collectible based on an analysis of the security value and the borrower's ability to pay.**
Deferral	A deferral is **a postponement of the payment of interest or principal or both. Principal may be deferred in whole or in part, interest may only be partially deferred.**

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Direct Loan A direct loan is **a loan serviced by the Agency as lender.**

Due Diligence Due diligence is the process of evaluating real estate as part of a financing application to determine the presence of contamination from release of hazardous substances, petroleum products, or other environmental hazards and determining what effect, if any, the contamination has on the regulatory status or security value of the property.

Entities Entities are **cooperatives, corporations, partnerships or joint operations**, such as limited liability companies.

Family Farm A family farm is **a farm which:**

- **produces agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence**
- **provides enough agricultural income by itself, including rented land, or together with any other dependable income, to enable the borrower to:**
  - **pay necessary family living and operating expenses**
  - **maintain essential chattel and real property**
  - **pay debts**

Continued on the next page

Family Farm (Continued)

- **is managed by:**
  - **the borrower when a loan is made to an individual**
  - **the members, stockholders, partners, or joint operators responsible for operating the farm when a loan is made to a cooperative, corporation, partnership, or joint operation**
- **has a substantial amount of the labor requirements for the farm and nonfarm enterprise provided by:**
  - **the borrower's immediate family**
  - **the members, stockholders, partners, or joint operators responsible for operating the farm when a loan is made to a cooperative, corporation, partnership, or joint operation**
- **uses or may use a reasonable amount of full-time hired labor and seasonal labor during peak loan periods.**

Family Living Expenses

Family living expenses are **any withdrawals from income to provide for needs of family members.**

Family Members

Family members are **the immediate members of the family residing in the same household with the individual borrower, or, in the case of an entity, with the operator.**

Farm

A farm is **a tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops, livestock, and aquaculture products for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes any such land, improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.**

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Feasible Plan

--**A plan is feasible if the cash flow budgets indicate sufficient cash inflows to pay all cash outflows to be incurred each year by the borrower during the term of the loan. When the term of the loan will exceed 1 production cycle and the planned cash flow budget is atypical; for example, including cash carryover, inventory carryover, new operations, carryover debt, atypical asset purchases, or significant operational changes; a typical cash flow budget must also be prepared. When the term of the loan or the servicing action will not exceed 1 year, such as an interest assistance renewal or an advance on a line of credit, only a feasible plan for the next production cycle is required.**--

Financially Viable Operation

A financially viable operation is one which, with Agency assistance, is projected to improve its financial condition over a period of time to the point that the operator can obtain commercial credit without further Agency direct or guaranteed assistance. A borrower that will meet the Agency classification of "commercial," as defined in Agency Instruction 2006-W, available in any Agency office, will be considered to be financially viable. Such an operation must generate sufficient income to:

- **meet annual operating expenses and debt payments as they become due**
- **meet basic family living expenses to the extent they are not met by dependable nonfarm income**
- **provide for replacement of capital items**
- **provide for long-term financial growth.**

Fish

A fish is **any aquatic, gilled animal commonly known as "fish" as well as mollusks, or crustaceans (or other invertebrates) produced under controlled conditions (that is, feeding, tending, harvesting, and such other activities as are necessary to properly raise and market the products) in ponds, lakes, streams, artificial enclosures, or similar holding areas.**

Fixture

A fixture is **an item of personal property attached to real estate in such a way that it cannot be removed without defacing or dismantling the structure, or substantially damaging the structure itself.**

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FSA	FSA is the United States of America, acting through the Farm Service Agency, an agency of the United States Department of Agriculture. References to the National Office, Finance Office, State Office, County Office, District Office, SED, DD, local credit officer, or other FSA offices or officials should be read as prefaced by "FSA."
Graduation	Graduation is **the Agency's determination that a borrower of a direct loan is financially stable enough to refinance that loan with a commercial lender with or without a guarantee.**
Guaranteed Loan	A guaranteed loan is **a loan made and serviced by a lender for which the Agency has entered into a Lenders Agreement and for which the Agency has issued a Loan Note Guarantee. This term also includes lines of credit except where otherwise indicated.**
Hazard Insurance	Hazard insurance **includes fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builder's risk, public liability, property damage, flood or mudslide, workers compensation, or any similar insurance that is available and needed to protect the security, or that is required by law.**
Holder	A holder is **the person or organization other than the lender who holds all or a part of the guaranteed portion of an Agency guaranteed loan but who has no servicing responsibilities. When the lender assigns a part of the guaranteed loan to an assignee by way of execution of an assignment form, the assignee becomes a holder.**
In-House Expenses	In-house expenses are **expenses associated with credit management and loan servicing by the lender and lender's contractor. In-house expenses include, but are not limited to: employee salaries, staff lawyers, travel, supplies, and overhead.**

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Interest Assistance Agreement	The interest assistance agreement is **the signed agreement between the Agency and the lender setting forth the terms and conditions of the interest assistance.**
Interest Assistance Anniversary Date	The interest assistance anniversary date is **the date on which interest assistance reviews and claims will be effective. This date is established by the lender. Once established, it will not change unless the loan is restructured.**
Interest Assistance Review	The interest assistance review is **the yearly review process that includes an analysis of the borrower or applicant's farming operation and need for continued interest assistance, completion of the needs test and request for continuation of interest assistance.**
Joint Operation	A joint operation is **individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property may be owned separately or jointly by the individuals. Joint operations include limited *--liability companies having more than one member.** A revocable trust may be a joint operation if it is a farming operation in which 2 or more farmers work together sharing equally or unequally land, labor, equipment, expenses, and income.**--***
Land Development	Land development is **items such as terracing, clearing, leveling, fencing, drainage and irrigation systems, ponds, forestation, permanent pastures, perennial hay crops, basic soil amendments, and other items of land improvements which conserve or permanently enhance productivity.**
Lender	A lender is **the organization making and servicing the loan or advancing and servicing the line of credit which is guaranteed under the provisions of Agency regulations. The lender is also the party requesting a guarantee.**
Lender's Agreement	A lender's agreement is **the appropriate Agency form executed by the Agency and the lender setting forth the loan responsibilities of the lender and agency when the Loan Guarantee is issued.**

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Lien	A lien is **a legally enforceable hold or claim on the property of another obtained as security for the repayment of indebtedness or an encumbrance on property to enforce payment of an obligation.**
Liquidation Expenses	Liquidation expenses are **the cost of an appraisal, environmental assessment, outside attorney fees and other costs incurred as a direct result of liquidating the security for the guaranteed loan. Liquidation fees do not include in-house expenses.**
Loan/Line of Credit Agreement	A loan/line of credit agreement is **a document which contains certain lender and borrower agreements, conditions, limitations, and responsibilities in a process of credit extension and acceptance in a loan format where loan principal balance may fluctuate throughout the term of the document.**
Loan Applicant	A loan applicant is **the party applying to a lender for a guaranteed loan or line of credit.**
Loan Transaction	A loan transaction is **any loan approval or servicing action.**
Loss Claim	A loss claim is **a request made to the Agency by a lender to receive a reimbursement based on a percentage of the lender's loss on a loan covered by an Agency guarantee.**
Loss Rate	The loss rate is **the net amount of guaranteed OL, FO, and SW loss claims paid on loans made in the past 7 years divided by the total loan amount of OL, FO, and SW made in the past 7 years.**
Major Deficiency	Major deficiency is **a deficiency that directly affects the soundness of the loan.**

Continued on the next page

Definitions of Terms Used in This Handbook (Continued)

Majority Interest	Majority interest is **any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, joint operation, or partnership.**
Market Placement Program	A market placement program is a program designed to place direct loan applications that are eligible for a loan guarantee with commercial lenders participating in, or eligible for, the guaranteed loan program.
Market Value	Market value is **the amount that an informed and willing buyer would pay an informed and willing, but not forced, seller in a completely voluntary sale.**
Minor Deficiency	A minor deficiency is **a deficiency that violates Agency regulations, but does not affect the soundness of a loan.**
Mortgage	A mortgage is **an instrument giving the lender a security interest or lien on real or personal property of any kind.**
Negligent Servicing	Negligent servicing is **the failure to perform those services which would be considered normal industry standards of loan management or failure to comply with any servicing requirement of this subpart or the lenders agreement or the guarantee. The term includes the concept of a failure to act or failure to act timely consistent with actions of a reasonable lender in loan making, servicing, and collection.**

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Net Recovery Value

Net recovery value is **the market value of the security property assuming that it will be acquired by the lender, and sold for its highest and best use, less the lender's costs of property acquisition, retention, maintenance, and liquidation.**

Nonessential Assets

Nonessential assets are **assets in which the borrower has an ownership interest that do not contribute an income to pay essential family living expenses or maintain a sound farming operation, and are not exempt from judgment creditors.**

Normal Income Security

Normal income security is **all security not considered basic security.**

Partial Release

Partial release is the release of a portion of the security used as collateral for a loan, usually accomplished by the sale of the property.

Participation

Participation is **a loan arrangement where a primary or lead lender is typically the lender of record but the loan funds may be provided by one or more other lenders due to loan size or other factors. Typically, participating lenders share in the interest income or profit on the loan based on the relative amount of the loan funds provided after deducting the servicing fees of the primary or lead lender.**

Partnership

Partnership is **any entity consisting of two or more individuals who have agreed to operate a farm as one business unit. The entity must be recognized as a partnership by the laws of the State in which the entity will operate and be authorized to own both real estate and personal property and to incur debts in its own name.**

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Present Value

Present value is **the present worth of a future stream of payments discounted to the current date.**

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Primary Security

Primary security is **the minimum amount of collateral needed to fully secure a proposed loan.**

Principals of Borrowers

Principals of borrowers **includes owners, officers, directors, entities and others directly involved in the operation and management of a business.**

Protective Advances

Protective advances are **advances made by a lender to protect or preserve the collateral itself from loss or deterioration. Protective advances include but are not limited to:**

- **payment of delinquent taxes**
- **annual assessments**
- **ground rents**
- **hazard insurance premiums against or affecting the collateral**
- **harvesting costs**
- **other expenses needed for emergency measures to protect the collateral.**

Purchase Money Interest

Purchase money interest is a component of UCC dealing with security and lien position. A lender providing for a crop or a particular piece of equipment can frequently have first position on that item despite other financing statements in place.

Reamortization

Reamortization is to rewrite the rates or terms of a loan made for real estate purposes.

Recapture

Recapture is **the amount that a guaranteed lender is entitled to recover from a guaranteed loan borrower in consideration for writing down a portion of their guaranteed loan debt when that loan was secured by real estate and that real estate increases in value. Also, the act of collecting shared appreciation.**

Related by Blood or Marriage

Related by blood or marriage means **individuals who are connected to one another as husband, wife, parent, child, brother, or sister.**

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Relative

A <u>relative</u> is **an individual or spouse and anyone having the following relationship to either:**

- **parents**
- **son**
- **daughter**
- **sibling**
- **stepparent**
- **stepson**
- **stepdaughter**
- **stepbrother**
- **stepsister**
- **half brother**
- **half sister**
- **uncle**
- **aunt**
- **nephew**
- **niece**
- **grandparent**
- **granddaughter**
- **grandson**
- **spouses of the foregoing.**

Rescheduling

<u>Rescheduling</u> is **to rewrite the rates or terms of a single note or line of credit agreement.**

Restructuring

<u>Restructuring</u> is the **changing terms of a debt through either a rescheduling, deferral, or writedown or a combination thereof.**

Security

<u>Security</u> is **property of any kind subject to a real or personal property lien. Any reference to "collateral" or "security property" shall be considered a reference to the term "security."**

Shared Appreciation Agreement

A <u>shared appreciation agreement</u> is **an agreement between a guaranteed lender and borrower that requires a borrower that has received a write down on a guaranteed loan secured by real estate to repay the lender all or some of the writedown received, based on a percentage of any increase in the value of that real estate at some future date, if certain conditions exist.**

Socially Disadvantaged Applicant

--**A <u>socially disadvantaged applicant</u> is a loan applicant who is a member of a group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as a member of a group, without regard to their individual qualities. For entity applicants, the majority interest has to be held by socially disadvantaged individuals. FSA has identified socially disadvantaged groups to**-- consist only of Women, Blacks, American Indians, Alaskans Natives, Hispanics, Asians, and Pacific Islanders.

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State or United States	State or United States is **the major political subdivision of the United States and the organization of program delivery for the Agency. The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.**
State Beginning Farmer Program	A State beginning farmer program is any program that is carried out by, or under contract to, a State and designed to assist persons in obtaining the financial assistance necessary to establish a new or maintain a recently established farming or ranching operation.
Subordination	Subordination is **a document executed by a lender to relinquish the priority of their lien, in favor of another lender that provides that lender with a superior lien position to secure a debt with the same collateral.**
Subsequent Loans	Subsequent loans are **any loans processed by the** FSA Finance Office **after an initial loan has been made to the same borrower.**
Transfer and Assumption	Transfer and assumption is **the conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of a loan in return for the assuming party's binding promise to pay the debt outstanding.**
Typical Plan	Typical plan is **a projected income and expense statement listing all anticipated cash flows for a typical 12-month production cycle; including all farm and nonfarm income and all expenses (including debt service) to be incurred by the borrower during such period.**
***--Typical Cash Flow Budget**	A typical cash flow budget is **a cash flow budget that reflects the cash inflows and outflows the operation will likely incur during a normal production cycle.--***
Unaccounted for Security	Unaccounted for security is **items, as indicated on the lender's loan application, request for guarantee, or any interim agreements provided to the Agency, that are security for the guaranteed loan that were misplaced, stolen, sold, or otherwise missing, where replacement security was not obtained or the proceeds from their sale have not been applied to the loan.**
Veteran	A veteran is **any person who served in the military, naval, or air service during any war as defined in 38 U.S.C. 101(12).**

Calculations and Formulas

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Lender Loss Rate Calculation

$$\text{Lender Loss Rate} = \frac{\text{(Total } \textit{losses paid} \text{ on loans made during the past 7 years)}}{\text{(Total } \textit{loan amount} \text{ during the past 7 years)}}$$

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Present Value Calculation

Present Value is the current value of an expected future cashflow. In order to execute a debt writedown, the present value of the loan being written down must be greater than or equal to the net recovery value of the loan's security.

The present value is used when the Authorized Agency Official fills out Form FSA 1980-88 (see paragraph 328)

Balance Available is Projected to Remain CONSTANT During Loan Repayment Schedule

Balance Available

1. Balance Available for Term Debt Repayment (BATDR) $ ________
2. All Other Debt Payments –$ ________
3. **Balance Available (line 1 – line 2)** $

Present Value

4. Repayment Schedule (in years)
5. Interest Rate %
6. Loan Amortization Factor
7. **Present Value = Balance Available (Line 3) divided by Loan Amortization Factor (Line 6)** $ ________

Loan Amortization Factor is a function of Repayment Schedule and Interest Rate. See the **Loan Amortization Reference Book** to determine the Loan Amortization Factor.

Actual formula for present value of a regular payment stream: $V = A\left[\frac{1-(1+i)^{N}}{i}\right]$

where V equals value, A is the payment, i is the interest rate, and N is the number of payments in months or years as applicable. Use of conversion table or calculator is recommended.

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Present Value Calculation (continued)

Balance Available is Projected to CHANGE During Loan Repayment Schedule

Subsequent Balance Available (balance Available After Balance Change)

1. Balance Available for Term Debt Repayment (BATDR) (After balance change)	$
2. All Other Debt Payments	$ _________
3. Subsequent Balance Available = BATDR (Line 1) minus All Other Debt Payments (Line 2) =	$ _________

Subsequent Present Value

4.Repayment Schedule (total time in years or months remaining on repayment schedule)	
5. Interest Rate	_________ %
6. Loan Amortization Factor	_________
7. Subsequent Present Value = Subsequent Balance Available (Line 4) divided by Loan Amortization Factor (Line 6)	$ _________

Initial Balance Available (balance Available Before Balance Change)

8. Balance Available for Term Debt Repayment (BATDR) (Before balance change)	$
9. All Other Debt Payments	$ _________
10. Initial Balance Available = BATDR (Line 1) minus All Other Debt Payments (Line 2) =	$

Initial Present Value

11. Period Initial Balance is Available (years or months)	
12. Interest Rate	_________ %
13. Loan Amortization Factor	
14. Initial Present Value = Initial Balance Available (Line 10) divided by Loan Amortization Factor (Line 13)	$
15. Subsequent Present Value (Line 7) + Initial Present Value (Line 14)	$ _________
16. Subsequent Balance Available Divided by Initial Loan Amortization Factor = Subsequent Balance Available (Line 3) ÷ Initial Balance Available Loan Amortization Factor (Line 13)	$ _________

Present Value Of Uneven Payments

17. Present Value of Uneven Payments = (Line 15) – (Line 16)	$ _________

Loan Amortization Factor is a function of Repayment Schedule and Interest Rate. See the **Loan Amortization Reference Book** to determine the Loan Amortization Factor.

Net Recovery Value = (A+B) - C

Net Recovery Value is
- –the estimated market value of security
- –plus any expected revenue or rent generated by the security
- –minus any reasonable lender incurred liquidation expenses

In order to execute a debt writedown, the net recovery value must be equal to or less than the present value of the loan being written down.

The net recovery value is used when the Authorized Agency Official fills out Form FSA 1980-88 (see paragraph 328)

A. Market Value of Property
(based on appraisal conducted according to § 762.127) ________
(Part 8, Section 4, Subsection 3)

B. Expected Income or Revenue
1. Annual Rent x Holding Period (HP)[1] ________
2. Annual Royalties x HP ________
3. Other Annual Income x HP ________
4. Annual % Property Appreciation x HP + ________

Total ________

C. Expenses
1. Prior Lienholder Indebtedness (P&I) ________
2. Annual Taxes and Assessments x HP ________
3. Annual Property Depreciation x HP ________
4. Annual Management Costs x HP ________
5. Essential Repairs to Secure and Rese ________
6. Other Costs:
   - Taxes ________
   - Closing Costs ________
   - Surveys ________
   - Administrative Costs Not Considered "In-House" ________
7. Resell Expenses-Commission, Advertising ________
8. Total Interest Cost During Holding Period (Note Rate) ________
9. Hazardous Waste Cleanup + ________

Total ________

[1]HP=Holding Period in years or percentages thereof. Typically 90 days unless longer period is agreed to by FSA.

D. Net Recovery Value

Market Value of Property + Expected Income or Revenue - Expenses = Net Recovery Value

________ + ________ - ________ = $ ________

Lender Documentation and Reporting Requirements

Document Submitted	SEL	CLP	PLP
General Loan Servicing			
FSA-1980-41, Guaranteed Loan Status Report	U	U	U
Projected Cash Flow for the coming year (for Lines of Credit)	U		
Annual Farm Inspection	U		
Narrative and Certification that the Borrower Analysis has been Performed and Borrower Progress is Satisfactory		U	
Certification that projected cash flow is feasible (for Lines of Credit)		U	

Secondary Market			
FSA-1980-36, Assignment of Guarantee	U	U	U

Distressed Servicing			
FSA-1980-44, Guaranteed Loan Borrower Default Status Report (every 60 days after initial borrower/lender meeting)	U	U	U
RD-449-30, Loan Note Guarantee Report of Loss	U	U	U
Agency approval of the Liquidation Plan	U	U	
FSA-1980-26 Report on Collection Activities on Liquidated Accounts	U	U	U

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Lender Documentation and Reporting Requirements (Continued)

Document Submitted	SEL	CLP	PLP
Restructuring Loans			
Agency Approval of Restructuring Request	U		
Written Certification that the requirements of §762.145 have been met		U	
Memo explaining the restructuring and certifying that the loan has become current.		U	U
Narrative describing the proposed restructuring	U		
A feasible plan	U		
Current Financial Statement from all liable parties	U		
Verification of nonfarm and other farm income	U		
Borrower Credit Report	U		
Financial history for previous three years	U		
Production history for the previous three years	U		
Copies of Restructured Promissory Notes	U	U	U
Copy of FSA-1980-44 stating the loan is current under restructured conditions	U	U	U
Request for Capitalization of Interest	U		
FSA-1980-84	U	U	U

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Lender Documentation and Reporting Requirements (Continued)

Document Submitted	SEL	CLP	PLP
Debt Writedown			
Request Agency concurrence	U	U	U
Balance Sheet	U	U	
Production History	U	U	
Financial History	U	U	
Cash Flow Statement	U	U	
Narrative explaining why no other restructuring option would work.	U	U	U
A current appraisal of all property securing the loan	U	U	U
RD-449-30, Report of Loss	U	U	U
FSA-1980-88, Loan Guaranteed Writedown Worksheet	U	U	U
FSA-1980-89, Shared Appreciation Agreement, for loans secured by real estate	U	U	U